



## MILITARY FORCE AND ETHICS

- > Legal Challenges in Limited War
- > Afghanistan Strategy: Point >< Counterpoint
- > Eliminating High Seas Piracy

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# Inside

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Front cover shows Chairman of the Joint Chiefs of Staff ADM Michael Mullen during memorial service for RADM Phil Coady, who commanded USS *Kitty Hawk* battlegroup during first Gulf War, October 2008 (DOD/Chad J. McNeeley). Table of contents (left to right): Soldiers survey village while providing sniper overwatch for patrol near Forward Operating Base Mizan, Afghanistan (U.S. Army/Christopher S. Barnhart); A-10 Thunderbolt II flies combat support mission over Afghanistan (U.S. Air Force/Aaron Allmon); Landing craft, air cushioned from Combined Task Force 151 deploys light armored vehicles on beach in Djibouti (U.S. Navy/Jesse B. Awalt); Marine provides security during patrol in abandoned village in Helmand Province, Afghanistan (U.S. Marine Corps/Pete Thibodeau).

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# DEADLINE Approaching for JFQ Issue 56



## FEATURING

### Irregular Warfare and Special Operations

Submissions Due by  
**September 1,  
2009**

## JFQ Issue 57

### Featuring

### The Expeditionary Interagency

Submissions Due by  
**December 1, 2009**

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## Open Letter to JFQ Readers

JFQ seeks your assistance in exploring new ideas in irregular warfare and special operations. On April 23, 2009, Deputy Secretary of Defense William J. Lynn announced that the 2009 Quadrennial Defense Review (QDR) will examine “ways to institutionalize irregular warfare capabilities while maintaining the United States’ existing strategic and technological edge in conventional warfare.” The following day, General Norton Schwartz revealed that the U.S. Air Force is contemplating the need to build partner capacity in the light strike role and would consider developing an irregular warfare wing. The QDR’s findings are informed by fiscal policy and the National Security Strategy of the new administration, in addition to the professional insights of those with practical field experience.

JFQ encourages you to submit manuscripts that speak to these issues among others that bear upon the objectives of the QDR. Boldly challenge traditional thought and practices in the joint, interagency, national security community, and propose new solutions!

**JFQ would also like to solicit manuscripts on specific subject areas in concert with future thematic focuses. The following topics are tied to submission deadlines for upcoming issues:**

### September 1, 2009

(Issue 56, 1<sup>st</sup> quarter 2010):  
Irregular Warfare and  
Special Operations

### March 1, 2010

(Issue 58, 3<sup>d</sup> quarter 2010):  
Strategy and Strategists

### December 1, 2009

(Issue 57, 2<sup>d</sup> quarter 2010):  
The Expeditionary Interagency

### June 1, 2010

(Issue 59, 4<sup>th</sup> quarter 2010):  
Unmanned Systems and Robotics,  
Essay Contest Winners

JFQ is pleased to announce a new national security journal, *Prism*, which has been chartered to promote civilian and military complex operations training and education. Published by National Defense University (NDU) Press on behalf of the Center for Complex Operations at NDU, the goal of *Prism* is to enhance the U.S. Government’s ability to prepare for complex operations by catalyzing cooperation, coordination, and synchronization among education, training, lessons learned, and research institutions and organizations. Complex operations consist of counterinsurgency; stability, security, transition, and reconstruction operations; and irregular warfare. NDU Press is now accepting manuscripts for inclusion in the inaugural issue of *Prism*, scheduled for publication in Fall 2009. Manuscripts may vary in length from 3,000 to 7,000 words and should be submitted per the guidance governing JFQ manuscripts on our Web site at [ndupress.ndu.edu](http://ndupress.ndu.edu).

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# LETTERS

**To the Editor**—I have completed Joint Professional Military Education Phase I at the Army Command and General Staff College (CGSC) in Fort Leavenworth, Kansas. From this education, I have become more discouraged rather than encouraged about the Services' desire to become more joint. The CGSC has done an outstanding job in its curriculum. Joint doctrine has been taught and discussed, each Service's capabilities and weaknesses have been reviewed, and the importance of coordinating and synchronizing each Service's actions has been stressed, but it seems something is missing.

The CGSC curriculum is full of historical and current examples of operations where two or more of our Services have come together to fight the Nation's wars with varying levels of success. Yet at the same time, we review case studies involving finger pointing between the Services in Operation *Anaconda*, discuss the relevance of the F-22 versus growing the Army for the counterinsurgency fight, read articles in Force Management class about how each Service fights for limited resources through the Planning, Programming, Budgeting, and Execution System (PPBES), and hear about debates at the highest levels of leadership over which Service is best suited to be the "lead" agency for the unmanned aerial vehicle. These heated topics do not scratch the surface of the friction between the Services in their struggle for legitimacy and scarce resources. These issues are indicators that although each Service is dedicated to achieving national security objectives, there are distracters that reduce a Service's full effort toward national security.

One of the overarching concepts for operational art is, for instance, ends, ways, and means. In this light, the *ends* are the operational objectives directed by the combatant commander, *ways* are the methods in which the means are employed, namely doctrine, and *means* are the personnel and equipment of each Service. This being said, each Service's contribution to the means through the PPBES and to the ways through joint doctrine puts the Services in direct competition rather than in a cooperative environment. In our time of limited resources and elusive adversaries, our efforts should not be hampered by inter-Service rivalry and irreconcilable doctrine. It is necessary to further the goals of the Goldwater-Nichols Act by changing the system to allocate

resources and redesigning doctrine so that the Services fight from one consolidated "playbook" rather than a "scrapbook" of irreconcilable doctrine.

Joint doctrine is the area that could improve jointness among the Services. Currently, joint doctrine has been described as the "skim milk" of doctrine; it is what remains after all of the "good stuff" has been removed. It seems that if two Services cannot agree on a concept to be placed in joint doctrine, then it should simply be *omitted* from the document and written in the respective Service's doctrine. This method sets up each Service for increased friction when they must come together in the joint fight. A change to the current system of doctrine would be to require U.S. Joint Forces Command to develop the doctrine for the Services, with the only purpose for specific Service doctrine being to clarify joint doctrine to the Service's lower echelons. This idea also builds each Service as a *joint* force from the beginning, rather than attempting to find common ground and concessions during the joint fight.

*Joint* should be more than knowing each Service's capabilities and weaknesses, deconflicting fires, and establishing the supported and supporting commander. *Joint* must be more than finding compromises between Services during conflict. *Joint* should be established at the beginning of the process, with each Service growing its personnel and designing its equipment with jointness in mind. In doing so, when it is time to bring two or more Services together in a conflict, joint operations will be a natural rather than an uncomfortable phenomenon.

—Major Robert H. Bryant, USA

**To the Editor**—In the last two issues of *Joint Force Quarterly*, you have featured articles that address the long-term costs of irregular and hybrid conflicts. One of my greatest concerns is the hidden cost of post-traumatic stress disorder (PTSD). While we say that we are destigmatizing PTSD within the Armed Forces, a diagnosis of PTSD effectively shuts the door to many kinds of future civilian employment when our warriors conclude their military service.

I recently spoke to a Reserve lance corporal in my command who has been diagnosed with a mild case of PTSD. He was certified by medical authorities as fully deployable and stated that he felt he was making good progress through the Veterans' Administration

hospital. However, when he recently came off Active duty and went to apply for a job with the Transportation Security Agency as a baggage inspector, he was denied consideration for the position due to the PTSD diagnosis. When I asked him how we could help, he replied, "General, how is it that I am fully qualified to go back to combat and carry a weapon, but not qualified to inspect bags at an airport?"

I did not have a good answer for him, but we did succeed at finding him other employment.

—Major General Michael R. Lehnert,  
USMC, Commanding General,  
Marine Corps Installations West

**To the Editor**—Like Lieutenant Colonel John Nagl, I appreciate the spirited discussion and important debate on matters of national defense and future conflict. Dr. Nagl is one of the most articulate and forceful of the writers who call for the liberal use of American military and national power in the troubled spots of the world that could threaten American interests to, as he has said, "change entire societies."

In a recent *Joint Force Quarterly* letter to the editor (2<sup>d</sup> Quarter, 2009), Dr. Nagl argued that I had quoted him out of context in an article that I wrote for *JFQ* (1<sup>st</sup> Quarter, 2009) on the future of the American Army. According to Dr. Nagl, I took a statement that he made in a recent review that he wrote of Brian Linn's *The Echo of Battle* out of context by incorrectly substituting the word *Army* for his word *soldier* when referring to what I said was the Army's ability to, using Dr. Nagl's words, "change entire societies." His response was that others who are familiar with these kinds of dialogues would understand his meaning to be of "soldiers" as a metaphor for a broader point beyond the Army about an interagency and whole-of-government approach for counterinsurgency and nation-building. Hence his accusation that I quoted him out of context.

I disagree. In the review of Linn's book, which is an intellectual history of the American Army, Dr. Nagl used the word *Army* as a proper noun at least 23 times. Most reasonable folks in America associate the word *Soldier* with the Army, just as they do *Marines* with the Marine Corps and *Airmen* with the Air Force. The context in which I quoted Nagl was correct and an accurate reflection of the points that he made in his review of Linn's book.

In fact, Dr. Nagl's letter, where he accuses me of taking him out of context, actually further proves what I have said about his vision for the future and the role of America in the world. Simply put, this role is to use American military power, however much it is reinforced by American civilian agencies, to intervene in the world's troubled spots and, again, "change entire societies."

If the American Army is directed by its political masters to do more interventions and nationbuilding in the troubled spots of the world, then that is exactly what we must do.

Unfortunately, the Army that Dr. Nagl and other counterinsurgency experts are calling for, one built around the principles of nationbuilding and counterinsurgency, will not be able to fight when we get there. Instead, it will be optimized for nationbuilding but not for fighting at the higher end of the conflict spectrum. History has shown that it is easier for a force trained and organized to fight to step in different directions to do counterinsurgency and nationbuilding. This principle does not work well in reverse.

Moreover, the continuing drive to see all problems of volatility and insurgencies in the world's unstable areas as a call to use American military power to build or rebuild nations actually produces a one-way-only approach to American security. The new way of American counterinsurgency—and war writ large, advocated by defense thinkers such as Nagl—demands an approach of nationbuilding by focusing on civilian populations. Now as a problem of instability pops up that touches on American interests, the only seeming solution is to send in large numbers of American combat forces to protect the populations, separate the insurgents from the people, and build new nations by changing foreign societies.

This approach is nothing less than fanciful, and it is reinforced by the American Army because it is the only way we have come to view the world and how to use military and national power in it. While this might make the American Army happy because we can isolate ourselves in our tactical and operational worlds (just as we did in the 1980s), it is not the basis for good strategy and military advice for policy.

It is time to break out of this straitjacket for the good of the Army and, more importantly, for the good of the Nation that we are sworn to protect and serve.

—Colonel Gian P. Gentile, USA

*[V]ictory in the Long War requires the strengthening of literally dozens of governments afflicted by insurgents who are radicalized by hatred and inspired by fear. The soldiers who win these wars require not just an ability to dominate land operations, but to change entire societies—and not all of those soldiers will wear uniforms, or work for the Department of the Army. The most important warriors of the current century may work for the US Information Agency rather than the Department of Defense.*

—from John A. Nagl's review of Brian McAllister Linn's *The Echo of Battle*, in *The Journal of the Royal United Services Institute*, April 2008

**To the Editor**—In the 20<sup>th</sup> century, the primary problem of international relations was dealing with states that were too strong to fit comfortably within their own borders—first Germany, then Germany and Japan, and finally the Soviet Union. In this century, the primary problem of international relations may well be states that are too weak to control what happens within their borders—Afghanistan, Pakistan, Mexico. These states are not fully sovereign; they cannot completely control what happens on their territory. In these ungoverned lands grow non-state actors such as the Taliban, al Qaeda, and narcotraffickers that present a clear and present danger to the people of the United States and the security of the world.

This change in the nature of the threat that we face demands new thinking about the security of America. The tank divisions that I was honored to serve in for 20 years were the right organizations to deter the Soviet Union across the Fulda Gap and to destroy Saddam Hussein's army—not just once, but twice. Tank divisions remain necessary to deter conventional aggression against our friends, but they are no longer sufficient. The challenges of the 21<sup>st</sup> century demand new national security organizations, designed not only to defeat our enemies but also to strengthen our friends.

President Barack Obama's recent speeches on American strategy in Iraq and Afghanistan highlighted the changes required in our force structure to deal with today's threats. In Iraq, Army Brigade Combat Teams will be replaced next summer with Advisory and Assistance Brigades, optimized to help the Iraqi army more capably deal with the internal and external threats that a recovering Iraq still faces. In Afghanistan, a brigade of the famed 82<sup>d</sup> Air-

borne Division will be reconfigured not to fight al Qaeda and the Taliban, but to advise and assist the Afghan National Army and Police to do so.

These changes are long overdue, but they are insufficient to build a lasting peace. In both Iraq and Afghanistan, small armies of civilian experts will work to improve governance, help the economy grow, and win the war of ideas—an effort that, over time, will work to change the nature of Iraqi and Afghan societies. It does no good to capture or kill terrorists and insurgents if the conditions that spawned them are not corrected; too many *madrassas* in Pakistan currently work to produce a generation of young people convinced that all of their problems stem from American policies. To win this war, we must change the curriculum in dozens of countries from one that preaches hate to one that engenders hope. That is not a fight for soldiers who wear uniforms, but a battle that can and must be won by civilians from expanded and expeditionary Departments of State, Agriculture, Justice, and the U.S. Agency for International Development. New wars demand new warriors, but to date we have shamefully neglected the transformation of our civilian instruments of national power.

The United States cannot eliminate the hatred, hopelessness, and fear abroad that led to the attacks of September 11 and a series of successive acts of terror. However, the Nation can work to change those conditions, and in doing so demonstrate that it stands for something more than the destruction of human potential that our enemies profess. In places such as Iraq and Afghanistan, where the governing structures have been destroyed and our opponents have been allowed to gain strength, changing those conditions may require the commitment of large bodies of American troops for a number of years. In most of the world, we can work to improve societies, reduce hatred, and build hope with a far smaller footprint; the counterinsurgency campaign in the Philippines, not the one in Iraq, should be our objective. In counterinsurgency campaigns both large and small, we must work to provide security for the population to set the conditions in which they can develop strong economies and good structures of governance. That is the challenge of this century for a new generation of Americans. For the security of our children, we cannot falter in this fight.

—Dr. John A. Nagl  
President,  
Center for a New American Security



# Executive Summary



U.S. Marine Corps (Ray Lewis)

Cpl Garrett S. Jones, injured in 2007 by an insurgent's bomb in Iraq, is first Marine with above-the-knee amputation to deploy to Afghanistan, June 2008

*I say it often, but it bears repeating here: in Afghanistan, the people are the center of gravity in this struggle. We know that. This whole effort is about them and their security. At the center of it all, what it really all comes down to is trust.*

—ADM Michael G. Mullen

In this issue, *Joint Force Quarterly* explores the very foundations of military art and science: ethics and law. The readers of *JFQ* know better than any how fundamental these disciplines are to leadership and the exercise of force on behalf of a nation. The profession of arms is a unique calling that precipitates and even necessitates a complex, structured subculture. Service to the Nation via an oath to defend the Constitution is not a right of citizenship; it is a privilege for which one must qualify to obtain and compete to maintain. Those citizens who pass muster are developed to exercise the authority of the state to arrest, detain, and kill with equipment as rudimentary as a knife and as sophisticated as nuclear weapons. With great power comes great responsibility, and these authorities are structured and channeled by ethical standards and codes of conduct crafted to preserve the rule of law.

The Forum begins with the candid views of this journal's publisher, Admiral Mike Mullen. The Chairman of the Joint Chiefs of Staff naturally takes a special interest in the institutional ethics of the Armed



Forces, and he is especially concerned with the challenges presented by hybrid conflicts where securing legitimacy in the eyes of the local population is essential. *JFQ* visited Admiral Mullen in his Pentagon office on April 30, 2009, and the 10 questions he fielded all bear on contemporary issues of ethics and law.

The second offering is a short essay from the Institute for National Security Ethics and Leadership. In it, General Richard Myers and Dr. Albert Pierce identify the traits of strategic leaders and outline the challenges to be overcome in the exercise of strategic leadership.

The third Forum installment comes from the Chief of Staff of the Army, General George Casey. Recognizing that “Army culture and institutions are not keeping pace with what is happening on the ground in Iraq and Afghanistan,” he has chartered an

ethics institution to address the demands of persistent complex conflict. The Army Center of Excellence for the Professional Military Ethic (ACPME) was established in October 2007 to see after three primary missions. The first is to assess, study, and refine the professional military ethic of the Army; the second is to create and integrate knowledge about this ethic; and the final mission is to transform attitudes and promote sensitivity to the nuances of operating among indigenous populations. ACPME is located at West Point, but the effort is ambitiously aimed Army-wide.

In our fourth Forum essay, Lieutenant General George Flynn speaks to a work that shall always be in progress as cultural change meets the immutable nature of war. This essay details how the U.S. Marine Corps is working to ensure that the greatest loyalty of Marines is to the Constitution and the prin-

ciples that undergird it. The author posits that irregular warfare places an increased premium on values and supports this claim by reporting the results of the Army’s Mental Health Assessment Team. Because it is impossible to predict ethics failures on the basis of any measurable performance standard, the Marine Corps has implemented a “coordinated continuous effort that must progress throughout a Marine’s service.”

The fifth essay takes us to an area of research that is long overdue in *JFQ*. Chaplains John Brinsfield and Eric Wester speak to the traditional role of clergy in ethical leadership and connect the dots to post-9/11 operations in Iraq and Afghanistan. U.S. military personnel are serving amid cultures that “do not separate religion, politics, and ethical norms,” and chaplain involvement in “Track Two Diplomacy,” recognized in Joint Publication 1–05, adds another dimension of support to military objectives. The activities of chaplains, however, can produce unintended consequences and always require commander direction.

The Forum concludes with an interesting article on the ethics of intelligence. After a historical survey, Professor William Nolte notes several basic reasons why intelligence *must* be bound by an ethical framework. This concept is by no means a traditional one. Congressional oversight of a powerful, secret, and permanent array of intelligence services within the framework of our constitutionally based republic has an even shorter history. As former Central Intelligence Agency Director Michael Hayden asserted, American intelligence “must operate in the space permitted by the American people.” Read this article; it will make you think.

In developing the essays in our Forum and Special Feature sections, the editor drew upon the offices of three noted leaders and scholars. For the essays on ethics, *JFQ* wishes to acknowledge Dr. Al Pierce and the former publisher of this journal, General Dick Myers (see sidebar). For legal advice, *JFQ* is indebted to the National War College’s Professor Harvey Rishikof. Since its inception in 1993, this journal has benefitted from the generous support of the world-class faculty within National Defense University’s colleges and research centers, to whom *JFQ* owes more than can be repaid. **JFQ**

—D.H. Gurney

## Checking the Moral Compass: The Institute for National Security Ethics and Leadership

*A professional ethics program for addressing these situations would help equip [leaders] with a sharper moral compass for guidance in situations often riven with conflicting moral obligations.*

—Final Report of the Independent Panel  
to Review DOD Detention Operations

In 2007, General Peter Pace, USMC, then Chairman of the Joint Chiefs of Staff, authorized creation of the Institute for National Security Ethics and Leadership at the National Defense University (NDU). The institute was established as a center of excellence in ethics and leadership in national and international security affairs, and its staff members work in all three of NDU’s broad mission areas: education, research, and outreach.

The institute’s director, Albert C. Pierce, has longstanding ties to NDU, having joined the faculty of the National War College in February 1985. From August 1998 to February 2006, Dr. Pierce served as the founding director of the Center for the Study of Professional Military Ethics at the U.S. Naval Academy (now known as the Stockdale Center for Ethical Leadership). In February 2006, he became the first professor of ethics and national security at NDU. General Richard B. Myers, USAF (Ret.), also a former Chairman of the Joint Chiefs of Staff, plays an integral role in the institute as the NDU Colin Powell Chair of Leadership, Ethics, and Character. General Myers is the author of *Eyes on the Horizon: Serving on the Front Lines of National Security* (Threshold Editions, 2009).



# An Interview with Michael G. Mullen

**JFQ:** *A recent essay in the foreign policy journal Orbis is critical of the general understanding of the classical code of American military ethics. The author [LtCol Frank Hoffman, USMC] asserts that it is no longer taught, modeled, or enforced and that it has consequently eroded since the Marshall/Eisenhower era. It further observes that the U.S. military is unique in that it meets all the requirements of a profession (learning, barriers to entry, promotion criteria, social responsibility, and so forth), save a printed code of ethics. Do you agree, and would it be appropriate to charter National Defense University to fashion such a draft code for your consideration?*

**Admiral Mullen:** Well, you've touched upon a critical issue, really, a bedrock issue for our military. I certainly agree with the author's premise that we need to pay more attention to the study of civil-military relations in this country. I believe our connection to the Ameri-

can people is vital, not just to the Service itself, but to the health of our nation writ large. We all have to constantly monitor that relationship and never take it for granted. As a "Vietnam Baby" myself, I know the difference it makes—for every citizen—when that relationship is not as strong as it should be. It's a big deal.

I think the author is also right to observe that the complexities of war today do not lend themselves—and in fact may never have lent themselves—to a neat and orderly separation of civilian control between the levels of war. I recall reading in many histories of the Civil War, in fact, about how very much Abraham Lincoln involved himself in operational and even tactical decisions. His impact was obviously pivotal in the outcome of that war. And civilian influence and control is just as critical—perhaps even more critical—today.

As I have argued, right here on the pages of *JFQ*, the military must remain apolitical and

must always observe, indeed hold sacred, the principle of civilian control of the military. We execute policy. We do not make it or advocate for it. That said, I realize my role is advising policy as Chairman, but that advice is always private. And once the decision is made, we move out. That's what our military does, and we do it well.

I would agree that we do need more of a focus on military ethics and civil-military relations in our schoolhouses. And we are taking a look at that right now. But I am not sure we need to draft up a new code, though I would certainly be willing to consider it.

We've done exceedingly well without one to date.

There's a lot of internal talk about leadership in our military, all the time. If you were to stand quietly in the back and listen to a BCT [Brigade Combat Team] commander's or a ship captain's words in front of his or her troops,

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**Admiral Michael G. Mullen, USN, is Chairman of the Joint Chiefs of Staff.**

**Colonel David H. Gurney, USMC (Ret.), and Dr. Jeffrey D. Smotherman of *Joint Force Quarterly* interviewed Admiral Mullen at his Pentagon office.**



ADM Mullen addresses 2<sup>nd</sup> Annual Tragedy Assistance Program for Survivors Gala, Washington, DC, March 31, 2009

DOD (Chad J. McNealey)

you are going to hear about ethical behavior and leadership. That is important. And that is where our greatness lies—in our people, and in their knowledge of how critically important their duties are, and above all, in their desire to serve a cause greater than themselves.

**JFQ:** *Rank carries responsibilities as well as privileges. Every junior officer learns that commanders are responsible for everything their unit does or fails to do. Principles and practices nevertheless fail to mesh when commanders and their trusted subordinates fail in important responsibilities. The fiasco that surfaced at Abu Ghraib prison in 2004 is a prominent recent example. Brigadier General Janis Karpinski, USA, reverted to colonel after the dust settled; one colonel was relieved of command; and one lieutenant colonel received a reprimand. No other commissioned officers in the chain of command were sanctioned. In sharp contrast, seven enlisted men and women (one an Army private) received dishonorable discharges and prison sentences. Are steps required to remedy inequitable penalties at all levels of command—not just in the high-profile cases that bring discredit to our nation?*

**Admiral Mullen:** There is no doubt that Abu Ghraib was a stain on our national character, and it reminded us yet again of the power of our actions. The incidents there likely inspired many young men and women to fight against us, and they still do, as a matter of fact.

I don't want to spend much time focusing on a specific case, but this issue does bring up something dear to me, and that's accountability. I'm a big believer in it, and always have been. It's a critical part of how I grew up in the Service. And I believe that accountability has to go from the top all the way to the bottom of the chain of command, in everything we do. Not just in criminal cases of misconduct. But everything.

I think we have taken steps in the recent past to demonstrate that sort of accountability. Just consider some tough decisions Secretary [of Defense Robert] Gates has made with Air Force and Army leadership. For that matter, consider Admiral Fox Fallon [William J. Fallon, U.S. Central Command commander, March 2007–March 2008], a great friend and colleague of mine, who I believe held himself accountable in the most noble of ways.

Accountability is a part of our fabric, part of our military institution. Again, history bears this out—when accountability is maintained and enforced, institutions thrive and

excel. When we lose sight of that, however, we see people lose their way. I don't believe people—by that I mean their character, their needs and wants—have changed all that much over the course of human history. Yes, technology and the means of warfare have evolved at a faster rate than ever, but the reasons people make decisions to follow certain people and rules never change.

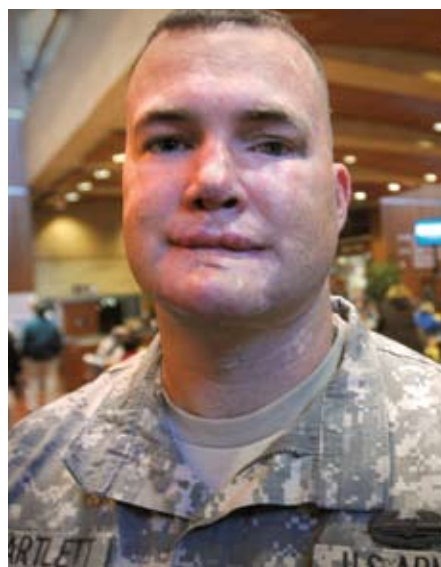
And holding oneself accountable for your actions and decisions, as individuals and institutions, is a big part of recognizing what we know to be honorable and effective and true, now and throughout the ages.

**JFQ:** *General Carter Ham, USA, and Brigadier General Gary S. Patton, USA, are heroes to vast numbers of Service personnel*

*this is where our greatness lies—in our people, and in their desire to serve a cause greater than themselves*

*after speaking publicly about the counseling they sought following emotional trauma suffered during the Iraq War. You have also been active in advocating support to military personnel with both seen and unseen injuries. Should changes be made in the way we care for our wounded warriors during and beyond their transition to civilian life?*

**Admiral Mullen:** First, I want to tell you that I applaud General Ham and General



**Survivor of 2005 roadside bombing in Baghdad, SGT Robert Bartlett, USA, has undergone over 40 surgeries and perseveres through an arduous regimen of therapy**

Patton for the courage to stand up and talk about this. It's critically important for leaders to do that. The example they set is overwhelming, as you mentioned. Yet there is still a stigma attached to mental health issues that I believe won't be eliminated without more leaders asking for the help they need.

Other than winning our nation's wars, we have no greater mission than taking care of our wounded and the families of the fallen, for life. We've made progress, but we have far to go. Many military bases are developing robust treatment centers, and we are still learning a lot about PTS [post-traumatic stress] and TBI [traumatic brain injury], and other "unseen" wounds. I've taken recent trips to Fort Campbell, Fort Hood, and Brooke Army Medical Center in San Antonio, and I've got to tell you, there is a lot of excitement there and a lot of investment—needed investment—in providing our soldiers, the wounded, and their families the gold standard of care they richly deserve.

But we have much left to do in order to improve the way we care for our wounded, their families, and the families of the fallen. The system we have today, even in our eighth year of war, is one still designed for peacetime. It's still too slow.

To me, it's about ability rather than disability, and a comprehensive approach, instead of merely compensation. No doubt, there is a lot being done right now, by a lot of good-hearted people, and I thank them for all they do. But we as leaders need to find better ways to fill the gaps between the Veterans Administration, the Department of Defense, and the many NGOs [nongovernmental organizations] all across the Nation who are ready to help. I call them a great "sea of goodwill"—and they are out there in significant numbers—but we need to find out how to best connect to all those people and organizations who have the talent and time and compassion to help and unite them under a banner of care that fits best.

We must never forget the families of the fallen. Their emptiness is one the rest of us will never fully know, one that can never be fully filled. I have learned a great deal from groups like TAPS [Tragedy Assistance Program for Survivors], who provide so much to those families to help them cope, not just with grief but life skills that enable them to finally create again after dealing with so much anguish and loss.

Yet there is so much more we can and must do. Our commitment to these families can't be just a seminar or a program or some



form of monetary compensation, although those things are all important—it must be about a real commitment, for life. No one has given more to the rest of us than these families. And we are rich enough as a Nation to ensure they have that kind of commitment.

**JFQ:** *It has been observed that “jointness” is undermined by the reality that Service loyalty features in the retention and promotion of senior officers. Poor knowledge of joint doctrine, lack of objectivity, and poor cooperation in the face of joint-Service interest conflicts are occasionally observed under the current system. Why shouldn’t the Chairman of the Joint Chiefs of Staff have a greater voice in the selection of two-, three-, and four-star flag officers in each of the Services?*

*other than winning our nation’s wars, we have no greater mission than taking care of our wounded and the families of the fallen, for life*

**Admiral Mullen:** The Chairman’s role is essentially twofold: to act as senior military advisor to the President and Secretary of Defense, and to represent more than 2 million men and women in uniform. That’s the job, and it’s a big one. It’s where my focus ought to be.

But I happen to believe our selection process serves us extremely well. The Title 10 authorities given to the Service chiefs, having been a Service chief myself, to select, train, and promote their officer corps is entirely appropriate, in my view.

The system works. And it’s borne out in the incredibly talented crop of leaders who are promoted year after year. So I do fully support the joint duty requirements in the law and observed by promotion boards. Those standards are producing for us the right kind of leaders who will eventually make general or flag rank.

I take issue with the premise that jointness has been undermined by Service loyalty. There always will be Service-specific loyalties. Some of that is good. There should be some degree of that. We as a nation are best served when each Service is an expert at its mission. But the truth is we are the most joint we’ve ever been after almost 8 years of war, and, by all accounts, we have been performing magnificently. So I am confident that we have the right focus. We’re moving in the right direction. And it’s some-

thing I, especially in my current job, watch very closely to ensure we continue to do so.

**JFQ:** *We frequently receive manuscripts from field-grade officers on civil-military relations that relate post-Goldwater-Nichols [Goldwater-Nichols Department of Defense Reorganization Act of 1986] examples of combatant commanders behaving at the expense, or even in subtle defiance, of policy. Should changes be made to the relationship between combatant commanders and the Office of the Secretary of Defense to ensure that policy is carried out vigorously?*

**Admiral Mullen:** Let me start by saying that I believe that it is good to speak out. It is essential for us as leaders that our people feel free to speak out on these matters—and they

healthy command relationships, and it’s working the way that it should.

I do think that we need something like a Goldwater-Nichols for the interagency. I am not convinced that we have it right yet for all instruments of our national power as far as integration and coordination across the board. I believe the President’s new Afghanistan-Pakistan strategy really gets to the issue with respect to a greater emphasis on civilian capacity.

We can’t succeed without generating civilian capacity in Afghanistan, so the President’s regional strategy is certainly a step in the right direction. And it is not going to happen overnight. Other departments in the interagency haven’t had the recruitment, haven’t offered the enablers and benefits



do, trust me. Many of our people out there have seen combat and been deployed two, three, even four and five times. They have earned the right to express their opinions. In fact, senior officers need to spend even more time listening to them and considering what they have to say.

When I put on my first star, I received a congratulations letter telling me that I would now “always eat well and never hear the truth again.” So I travel—I like to travel a lot—because it is really the only way I have found to really get to the truth: by talking to the folks downrange.

That said, I don’t think we need changes with respect to command relationships. And I am not aware of Active-duty senior leaders acting in defiance. As I have said before, we in the military execute policy. We should continue to do so and to better understand our place in the process. Goldwater-Nichols established

like we have for the military, such as indigenous health care or an appropriate level of life insurance. What we need—and I’ll use Afghanistan as an example—is an “Expeditionary Workforce” in our government. As a government, we need to figure out how to resource and sustain these efforts because balance between civilian and military efforts is so critically important.

**JFQ:** *The New York Times recently drew attention to the seemingly conflicted roles among former general and flag officers of, on the one hand, being strategic analysts on television and, on the other hand, being on boards of directors or otherwise representing defense contractors. Are you troubled by the apparent conflicts of interest involved in some of the activities of former generals and admirals? If so, what should be done about it?*



**Admiral Mullen:** I am not going to get into any specific allegation of conflict of interest. I will say this, though—which I have said many times—about the role taken in public discourse by some retired officers. One, they have the right to speak out. We should respect the fact that as retired officers, they are free to express their opinions. And two, I worry a great deal about the level of currency they have in operations they speak to. I remain concerned about the degree to which the American people confuse Active-duty representatives and retired or veteran representatives.

I think General Chuck Boyd [USAF] best summed it up when he addressed this issue during a commencement ceremony address at the Air War College in 2006. He said that the time for general and flag officers to express

With all of that being said, there is no review currently under way, and I am not prepared right now to say that any other particular thing will dominate our thinking should we go down that path.

**JFQ:** *There is broad recognition of the importance of linking popular support and military activity in counterinsurgency (so-called hearts and minds). But in the information age, combatants—even in conventional wars—are able to go directly to an opponent's population and strike at that support as well. Are we prepared to take steps to strengthen domestic civil-military comity in the event of conventional warfare? How do you, as Chairman, view the ability of the United States to break down said comity in our opponents?*

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*we can't succeed without generating civilian capacity in Afghanistan, so the President's regional strategy is certainly a step in the right direction*

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their opinions to civilian leaders is while they are on Active duty, in the halls of power—but to do so in private, and to maintain “purity from partisanship” once *that* time is over. That speech is the gold standard on that issue, in my view, and I really do recommend it to you.

**JFQ:** *The “Don't Ask, Don't Tell” policy is once again in the news as special interest groups petition to alter the status quo. It is clear that no alternative—be it the status quo or any change thereto—will satisfy all parties concerned. Without intruding into specific advice that you might provide the Commander in Chief, what should be the overriding consideration influencing any decision concerning this moral dilemma? Is good order and discipline within the Armed Forces the primary consideration, or some other factor(s)?*

**Admiral Mullen:** There has been, as far as I know, no change to the law. We in the military obey the law.

I will tell you frankly, though, that the President has discussed this issue with me in broad terms—just that he is interested in looking at Don't Ask, Don't Tell. I have neither been asked for any specific recommendations, nor have I offered any at this point. When the tasking comes to do that, I will provide the President with my best professional advice—based on a thorough review of that law's impact to our military readiness.

**Admiral Mullen:** This question strikes at the heart of the President's new strategy for Afghanistan and Pakistan because we recognize this is a very precise and delicate problem, and quite honestly we do need to get a better handle on it from a communications standpoint. This is a very big issue for all of us because the enemy is not constrained by the truth; I mean, it's much easier to get your word out first when you can lie about it. I can tell you we are working very hard on this right now, both from a public affairs and an information operations perspective.

Let me talk for a moment on the issue, one that every time it occurs really sets us back, and that's the issue of civilian casualties, which are a great case in point to make in this discussion. We are getting much better at trying to minimize them, but they continue to happen. And when they do occur, we have got to recognize it right up front and try to rapidly make amends, and we need to do so in a very public way.

I say it often, but it bears repeating here: in Afghanistan, the people are the center of gravity in this struggle. We know that. This whole effort is about them and their security. At the center of it all, what it really all comes down to is trust.

We can't win—we don't win—without earning their trust, and providing alternatives to the violent lives many are choosing right now. And we can't earn their trust if we aren't

credible in their eyes. As the President has said, the best weapon we have is our example.

**JFQ:** *The following question came from a lieutenant colonel in Iraq: “The ethical dilemmas of contracting in the field are worsening by the week. As we do more and more of it, the rules grow increasingly complex and we verge on the need to have a dedicated Judge Advocate General at the battalion level. The temptations to go to the fringes of the law and beyond are very real, not for the sake of personal gain, but just to accomplish the mission. My battalion S4 inherited a bad contract from the previous unit and has been spending the lion's share of his time trying to fix it since we arrived in mid-February 2009. He has no formal training in contract law, but he is very smart and able. He is trying to get this \$500,000 project completed, but the result threatens to be a \$500,000 piece of junk that is completely unusable and a waste of taxpayer money. For an extra \$90,000, he can get the building constructed to actually meet the requirements it was originally let for. He was asked, seriously, by a field-grade officer in the Multi-National Force–Iraq contracting command if he wanted to get this project done, or if he wanted to do it legally. The legal restrictions in place make it nearly impossible to get things done to specifications. He will not compromise his integrity, but we also don't want to lose the \$500,000 already spent.” The Armed Forces do work such as this because the inter-agency is not up to it. How can we get help with these cultural and moral incongruences?*

**Admiral Mullen:** To be honest, I am not very familiar with the specifics here, so I can't get into too much detail. However, I can understand this lieutenant colonel's frustration. I will only say three things on this issue.

First, we all realize the need to get a better handle on the entire contracting business. It is an issue we are all working hard on right now. But the truth is we don't really know all the contracts out there or how much we are spending, and to be honest, where the money is all being spent. I've worked budgets for many years, and I know this is not an easy issue. And in my eyes, this is a big problem that we simply must get our arms around.

Second, as this relates to the interagency question, we need to integrate better and improve civilian capacity in jobs such as this where we really aren't the right people to do it. Again, the President has taken this on directly and he, Secretary Gates, and I all recognize that most solutions to the problems

we face today are not military ones. They require a whole-of-government approach.

Finally, and this gets directly back to the question on accountability: It's an absolute. Now, I am sure this officer won't compromise his integrity, and that's key. For me, it is far better to have a project suffer than suffer any loss of our personal integrity. The ramifications of that will have far greater consequences to what we are trying to achieve.

**JFQ:** *The popular press has been heralding stress fractures in the Armed Forces and even the diagnosis of a "broken Army," with accompanying symptoms of high suicide rates, divorce, domestic violence, and other anecdotal evidence attendant to assertions of U.S. military exhaustion. In the face of this, you have observed that the Army is quite robust and that military families are in fact more resilient than reported. How do you account for this apparent divergence?*

**Admiral Mullen:** I've said it often: our forces are the best and most experienced I've seen in 45 years. Actually, I would argue our forces are the most war-tested and combat-ready ever. And every occasion I spend time with our ground forces out in the field, I am struck by the skip in their step and their morale. They know they are making a difference, and they—and their families—are proud of that.

But that doesn't mean they don't get tired. They do. They've been working very hard over the past 8 years, and they are pressed. The stresses on all our Services are real. Deborah and I travel a lot together, and she has met with thousands of families. They talk to her and what they tell her is that they are tired, but also that they are very proud of their Servicemembers and remain very dedicated to them.

We are trying to increase the dwell time, and have made some progress in that regard, and I really give Secretary Gates a lot of credit for that, as I do for his decision to end stop-loss. But it's going to take some time for all those changes to take effect. In the meantime, we need to do more to make sure when you're home, you're really home.

We must provide more of what I call "home time" because, honestly, we are eating our own seed corn here. This is an issue that we must get absolutely right. The bottom line is this: The investment we make today in securing our Servicemembers and their families and providing them a chance to breathe and have a life is quite literally an investment in the future of this country—the best we could ever possibly make. **JFQ**

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*... promoting excellence and innovation in education ...*

**The National Defense University (NDU) Foundation** was pleased to support three writing competitions conducted in 2009 by NDU Press. The Foundation congratulates the contestants and winners of the following:



## **The Secretary of Defense National Security Essay Competition**

The Secretary of Defense initiated this competition in 2007 to inspire critical and innovative thinking on how to adapt national security institutions to meet current and future challenges.



## **The Chairman of the Joint Chiefs of Staff Strategic Essay Competition**

In the 28<sup>th</sup> annual competition, the Chairman challenged students in the Nation's joint professional military education institutions to think and write creatively about national security strategy.

## **The Joint Force Quarterly Kiley Awards**

In honor of the former Director of NDU Press, Dr. Fred Kiley, the most influential essays from 2008 were selected for recognition. Articles were evaluated for their contributions toward the JFQ mission of continuing joint professional military education and security studies.

The final round of the competitions was held May 19–20, 2009, at Fort Lesley J. McNair, with 22 professors from the joint professional military education colleges serving as judges. The winners have been posted on the NDU Press Web site at:

[www.ndu.edu/inss/press/winners](http://www.ndu.edu/inss/press/winners)

*The next issue of JFQ (Issue 55, October 2009)  
will include the winning entries  
from the essay competitions as a Special Feature.*

**The NDU Foundation** promotes excellence and innovation in education by nurturing high standards of scholarship, leadership, and professionalism. The National Defense University depends on the NDU Foundation to support university activities that are not covered by Federal appropriations. Many activities at the heart of a sound university environment—such as endowments, honoraria, competitions, and awards—cannot be paid for by government funds. Thus, the NDU Foundation offers Americans the opportunity to invest in the Nation's security by supporting these activities.

Research and writing competitions are conducted by NDU Press with the generous financial support of the NDU Foundation. The Foundation is a nonprofit 501 (c)(3) organization established in 1982 to support the National Defense University.



**For more information, visit the NDU Foundation Web site at  
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# On Strategic Leadership

U.S. Marine Corps (Lindsay L. Sayres)



**I Marine Expeditionary Force and Multi-National Division North commanders discuss election security plan with Iraqi soldiers and Kurdish representatives in Mosul, January 2009**

By **RICHARD B. MYERS** and

**ALBERT C. PIERCE**

**T**here are some characteristics of strategic leadership that are common to other activities and some that are distinctive. Both the general and specific qualities and capabilities of strategic leadership are important. But there are six that will be particularly relevant to strategic leaders in the future: openness, nuance, agility, integration, teamwork, and ethics or moral values.

Because the scope of opinion on strategic leadership is diverse, leaders must be open to different points of view. Indeed, they should encourage subordinates, peers, and others—from the corridors of power and the public at large to allies and friends abroad—to express their views as directly as possible. No one has a monopoly on practical wisdom about the complex issues facing American leadership.

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**General Richard B. Myers, USAF (Ret.), is the National Defense University (NDU) Colin Powell Chair of Leadership, Ethics, and Character. Dr. Albert C. Pierce is Director of the Institute for National Security Ethics and Leadership at NDU.**



**Marine Corps officer greets man portraying Iraqi official during leadership engagement exercise**

U.S. Marine Corps (Kelsey J. Green)

The problems that occupy strategic leaders involve ambiguity and complexity. If these problems were unambiguous and simple, they would be solved at lower levels. Strategic leaders must be able to recognize and deal with this ambiguity and complexity and the shades of nuance they present. This requires skills in managing cognitive dissonance, for evidence and argumentation usually send conflicting signals. Denial is not one of those skills. Leaders may be able to deny that they perceive cognitive dissonance, but they cannot make the conflicting signals disappear by doing so. A well-developed appreciation for nuance would generally reject an either/or approach, which in itself denies ambiguity and complexity. For leaders in particular, this means that tactics, techniques, and procedures—though important and even necessary—may not always be up to the task at hand, which can lead to the consideration of another quality.

Strategic leaders do not possess single-issue inboxes or control their agendas. They must be able to transition with little or no warning, and at times turn on a dime, from one problem to another. It is the policy equivalent of the so-called three-block war. In practicing agility, leaders must be informed and guided by doctrine and past experiences but not become slaves to them. Properly understood, military doctrine is authoritative but requires judgment when applied. Too often, professional officers remember the former but not the latter, and rigidly apply doctrine to situations that may be significantly different from those the doctrine writers envisioned.

Almost by definition, strategic problems are *multidimensional*, involving military, political, economic, cultural, social, religious, and historical factors and forces that are often difficult to disentangle. Thus, successfully addressing strategic problems involves several instruments of national power, sometimes all of them. Strategic leaders must know the instruments at their disposal and be able to help integrate and coordinate them with other departments and agencies. Leadership requires the skills of an orchestra conductor and not of a soloist, no matter how talented.

Government operations on the strategic level require teamwork. First, strategic leaders must build a team within the agency that includes both civilian and military officials and political appointees. The former are

nonpartisan experts, and the latter make administration policy. Second, strategic leaders must build a strong interagency team to integrate and apply the various instruments the given problem demands. Third, and increasingly in the 21<sup>st</sup> century, strategic leaders must build teams with coalition and alliance partners whose cultural backgrounds and modes of operation frequently will differ greatly from their own.

Relationships are critical in building teamwork on all three levels. Organizations do not cooperate or integrate—people do. Building relationships takes time, and new administrations sometimes do not have that luxury because real world concerns will suddenly intrude. Thus, forming and molding relationships must start on day one. The key to strong and productive relationships is trust. It must be built and earned; it cannot simply be declared. It must be multidirectional, not unidirectional. For trust to take hold in organizations, leaders on all levels must be both trustworthy and trusting. Both qualities are necessary; neither by itself is sufficient.

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*organizations do not  
cooperate or integrate—  
people do*

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Ethics are always important, especially given the challenges the Nation confronts today. Strategic leaders are guided by an ethos that defines and regulates the military profession: the values and principles enshrined in the U.S. Constitution and the Declaration of Independence. In an era when the world is shrinking, news is driven by a 24-hour cycle, and coalitions have become the norm, ethics also involve what the Founders called “a decent respect to the opinions of mankind.” Ethics must involve moral ends and means, especially in the case of strategic leaders who wrestle with the problems of the day. Ends can justify some means, but not always. In every organization, regardless of size, the leaders set the tone, including the ethical tone. Within military organizations, the command climate starts at the top. It is reflected in what strategic leaders say, and those who serve in their organizations, as well as those outside who come into contact with them, pay attention to their words. **JFQ**



**NEW**  
from **NDU Press**



### Strategic Forum 239

*The United States and the Asia-Pacific  
Region: National Interests and Strategic  
Imperatives*

Notwithstanding the 2008–2009 financial crisis, East Asia today is the home of the world's most dynamic economies. U.S. trade and economic ties to the region are growing, while the United States maintains longstanding treaty alliance relationships with Japan, South Korea, Australia, the Philippines, and Thailand. In addition, the growing number of Asian-Americans has reinforced the long history of cultural interaction across the Pacific.

James J. Przystup argues that the totality of these economic, security, and cultural ties reflects the enduring nature of U.S. interests in the Asia-Pacific, making a case for an active American role in this dynamic region. After reviewing U.S. interests in contemporary Asia, he explores the strategic imperatives that will confront the Obama administration in the region: articulating an overall vision for U.S. policy, strengthening the various alliances, supporting peaceful resolution of disputes, integrating the rising power of China, preventing weapons proliferation, engaging multilaterally, and addressing nontraditional threats.

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# Advancing the Army Professional Military Ethic

By GEORGE W. CASEY, JR.

**T**oday, our Army faces two broad challenges: restoring balance to a force stretched and strained by almost 8 years of war, and adapting to the anticipated demands of 21<sup>st</sup>-century conflict. Repeated deployments to Afghanistan and Iraq have placed enormous burdens on leaders and Soldiers. In the near future, the strains stemming from the frequency and complexity of such operations will likely remain. We expect the coming decades to be characterized by persistent conflict—protracted confrontation among state, nonstate, and individual actors increasingly willing to use violence to achieve political and ideological ends. The realities of this era will continue to test our leaders as they operate among the people in complex environments. Here, moral-ethical failures, even at the lowest levels, have strategic implications.

As the character of conflict in the 21<sup>st</sup> century evolves, the Army's strength will con-

tinue to rest on our values and our ethos. The actions of our leaders, especially our junior leaders, must remain true to those values. Success may hinge on decisions they make in ambiguous, time-sensitive situations. At the very least, their collective actions will go far toward shaping the outcome of operations. Some indicators suggest that we have more work to do. For example, a 2006 Army study found that 40 percent of Soldiers surveyed would not report a comrade for committing a potential war crime.

Most of our Soldiers do the right thing time and again under intense pressure, but we must maintain our high ethical standards—a key source of our Army's strength—throughout this era of persistent conflict. In October 2007, we chartered the Army Center of Excellence for the Professional Military Ethic (ACPME) to ensure that our core values and ethos remain strong in the face of repeated deployments and the challenges of modern,

complex battlefields. This past spring, ACPME assumed formal responsibilities for the full scope of doctrine, organization, training, materiel, leadership and education, personnel, and facilities as they affect the professional military ethic and character development for the Army at large. I selected the United States Military Academy at West Point as the Center of Excellence because it has served as the wellspring of professional Soldier values for more than 200 years. Today, over 80 percent of the faculty at West Point has combat experience. Instructors can draw on this experience as they educate leaders of character who will be able to meet the challenges of a complex operational environment. More broadly, ACPME will make an Army-wide contribution as it explores the moral and ethical foundations of the profession of arms.

Our professional military ethic is the system of moral standards and principles that define our commitment to the Nation and the way we conduct ourselves in its service. In part, we articulate the professional military ethic through Army values, the Warrior Ethos, the noncommissioned officer's creed, the Soldier's creed, and oaths of office. Yet the full meaning of the professional military ethic extends beyond these beliefs and norms. More implicit aspects of our rich history and culture influence our moral compasses as well. ACPME will assist our leaders and institutions in articulating this ethic and in sustaining the future moral-ethical health of America's Army.

This initiative is an Army-wide effort reaching across commands, the Army schools system, and the operating force to capture existing expertise and promulgate professional military ethic resources for our Army.

**General George W. Casey, Jr., is the 36<sup>th</sup> Chief of Staff of the U.S. Army.**



Deputy commanding general of Multinational Division–Baghdad addresses media after ceremony transferring Sha'ab Central Market to Iraqi control, January 2009

In partnership with other Army organizations, ACPME will provide a number of tangible benefits to the Service: curriculum and courseware for formal training on the professional military ethic; publications and scholarly research on topics pertinent to Army values and the warrior ethos; junior leader developmental products; train-the-trainer courses and leader training; and outreach through a number of conferences, seminars, and forums.

I have charged ACPME with three main missions. The first is to assess, study, and help refine the professional military ethic of the Army. Outside of some surveys, much of what we understand about the current professional military ethic is anecdotal or not well articulated. It is also vitally important that we take care to understand the ethical issues our Soldiers face so we can tailor programs appropriate to their needs. With this goal in mind, ACPME has been gathering data over recent months from a variety of sources and soon will conduct a survey of forces in Iraq.

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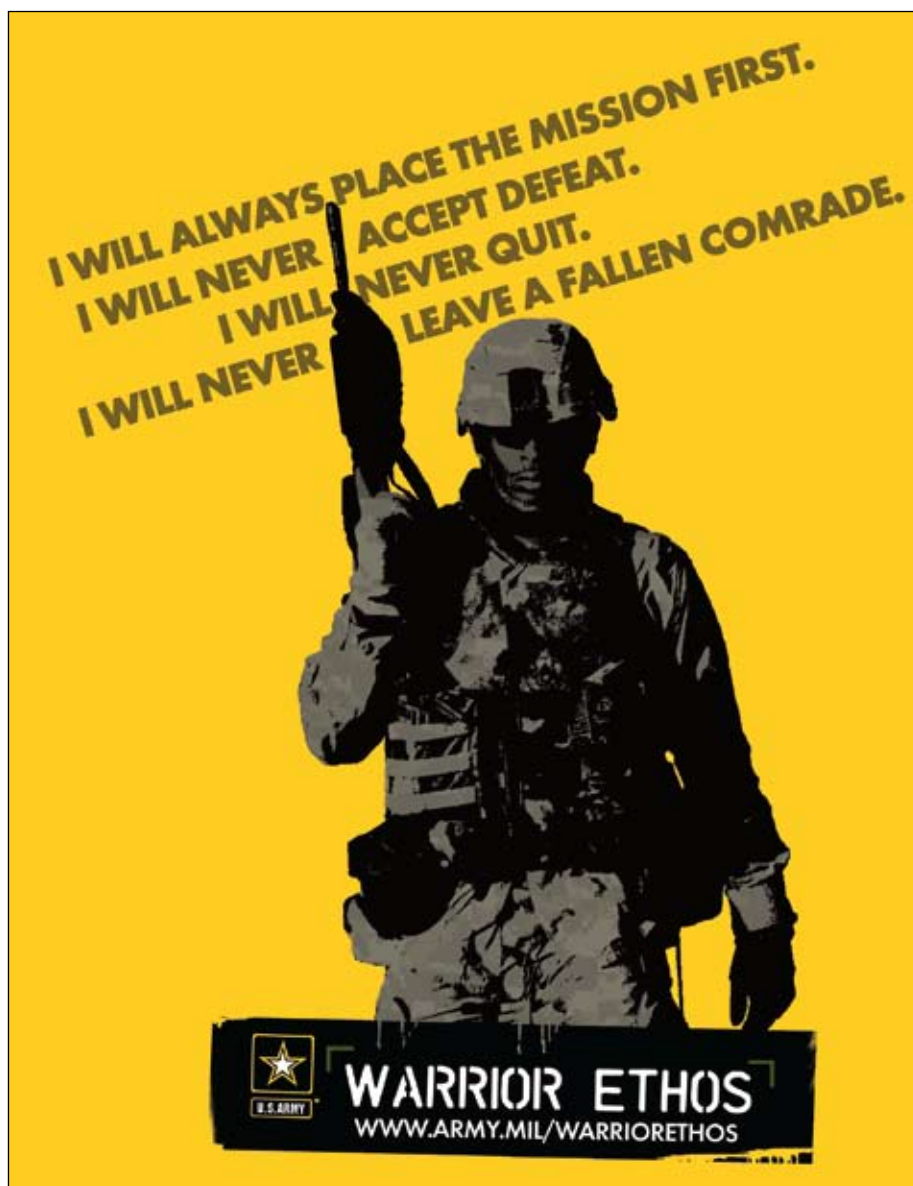
The second mission is to create and integrate knowledge about our ethic. This will entail creating a synergistic relationship among the Army, our joint and international partners, and academia to direct and analyze the latest and most advanced research on topics related to the professional military ethic—from fields including ethics, law, behavioral science, leadership, philosophy, and social science. Soon, for example, we will begin to publish a series of monographs under the joint auspices of ACPME at West Point and the U.S. Army War College's Strategic Studies Institute. Using this knowledge, we can enhance strategic and critical thinking, promote dialogue at all levels and across all components, and capture the Army's imagination on this vital subject.

The third mission is to accelerate moral-ethical development in individuals, units, and Army institutions in order to transform attitudes and to remain sensitive to the nuances of operating among the people in an era of persistent conflict. We need to develop leaders

at all levels who can recognize a morally ambiguous situation, apply appropriate decisionmaking skills, and demonstrate the confidence and courage to do what is right. Army culture and institutions are not keeping pace with what is happening on the ground in Iraq and Afghanistan. We need to examine our professional military ethic and respond to the issues arising from this more complex environment. A key task will be to support the U.S. Army Training and Doctrine Command in requirements analysis, doctrine, programs of instruction, and the development of written texts—as well as developing and promulgating training and educational products to the operating force.

While West Point as the Center of Excellence will serve as the Army's lead, this effort must be Army-wide. Ultimately, this is not

about the study of ethics or any other related process; it is about the core of our Army profession. Our Service has much to be proud of, but the challenges ahead of us are great. We have to study and think about our professional military ethic and our culture in light of today's circumstances. At the same time, we need to be the guardians of the legacy born in 1775 with our Army's founding and passed from generation to generation. The citizens of the United States expect nothing less than unwavering integrity, honor, courage, competence, and professionalism from their Army. The Army Center of Excellence for the Professional Military Ethic is a demonstration of our commitment to maintaining and strengthening the moral fabric of our profession. But it is only a beginning. Taking the next step is up to all of us. **JFQ**



U.S. Army



# Keepers of the Flame

By GEORGE J. FLYNN

*Today the eyes of all people are truly upon us—and our governments, in every branch, at every level, national, state and local, must be as a city upon a hill—constructed and inhabited by men aware of their great trust and their great responsibilities.*

—John F. Kennedy

As the sun rose over the town of Ramadi on April 22, 2008, Corporal Jonathan Yale and Lance Corporal Jordan Haerter watched a large truck approach their checkpoint. The truck should have slowed, but it accelerated despite warnings from the two Marines. Bystanders scattered in anticipation of danger, but the young Marines stood their ground and engaged the truck with no regard for their own safety. The truck rushing at Yale and Haerter blew up at the checkpoint, killing Haerter and mortally wounding Yale. Marines as far as 300 feet away were injured by the blast, which threw hunks of concrete through the air and left a hole 20 feet wide in the street.

As witnesses pointed out after the attack, it was these two Marines' courage and commitment to their mission that saved the lives of 50 Marines and an equal number of Iraqi police who were in the immediate area. Corporal Yale and Lance Corporal Haerter's decisive actions, unlimited courage in the face of extreme danger, and complete dedication to duty and their fellow Marines exemplified the fighting spirit shown daily by Marines in Iraq.

We all remember the similar terrorist attack against our Marines in Beirut. There, a suicide bomber crashed his truck through the Marine defenses and detonated a bomb that ripped through the barracks, killing 241 Marines, Sailors, and Soldiers.

However, because of Corporal Yale and Lance Corporal Haerter's decisive actions, the barracks in Ramadi were not bombed. The Marines in the compound were not killed. The bomber failed because Yale and Haerter stood their ground, fired only after issuing repeated warnings, and refused to let the assassin pass.

For over three decades, it has been our challenge to carry the torch passed to us by the standard bearers of the "Old Breed"—the generations of Marines who came before us. In the example set by Corporal Yale and Lance Corporal Haerter, we can see that the legacy has passed from one generation of Marines to the next.

Why did Corporal Yale and Lance Corporal Haerter stand their ground? In answering this question, we must examine the legacy of heroes who were compelled to do the *right thing* when it was the *hard thing* to do. Only when we discern the sense of obligation to the legacy that drives Marines will we understand why they are such remarkable keepers of the



2<sup>nd</sup> Marine Division (Casey Jones)

Blast crater from vehicle-borne improvised explosive device that killed Cpl Jonathan T. Yale and LCpl Jordan Haerter, Ramadi, April 22, 2008

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flame, and what we must do to help them carry the flame forward.

This article addresses the leadership challenges Marines face in today's Long War environment, and the enduring responsibility all Marines have to ensure that our Corps remains the Nation's expeditionary force in readiness and stays true to the Core Values of *honor, courage, and commitment*.

### Unchanging Principles

On today's battlefields, we believe that our values are more important than ever. This opinion is supported by reviewing the Army's Mental Health Assessment Team Four (MHAT IV) results. Because of the combat stresses our Marines face in Iraq and Afghanistan, we remain concerned about the possible decay of values and ethics since some Marines surveyed by MHAT IV indicated less than wholehearted commitment to treating noncombatants with dignity and respect. A small number even believed that all noncombatants should be treated as insurgents until proven otherwise.

As we send young men into battle, we subject them to the same awful circumstances faced by Marines in the World Wars, where men struggled to maintain a sense of humanity even while killing others. But that is what the American people expect of their warriors, and it is especially important on today's battlefields. Just as our friends trust in our steadfast devotion to right, our foes must fear the same.

Counterinsurgencies, by their nature, often blur the lines between friend and foe, but our values remain constant. Our enemy—who is not bound by proportionality and may kill without conscience—does not change who we are or what we believe in. For Marines, doing the right thing is the underlying, unchanging principle—a principle we reinforce through accountability and responsibility.

Accountability for a unit's performance rests with its leaders. Our commanders must create a command climate where Marines are given responsibility, challenged to demonstrate moral and physical courage, and held accountable for their actions. This focus and practice give us the ability to meet missions and overcome challenges, especially in combat.

Responsibility for an individual's actions rests with that individual. When Marines enter the operating forces, they know the right thing to do. The rigors of combat demand no less. Just as every Marine is a rifleman and has to keep his *rifle* clean,

every Marine also has a responsibility to keep his *honor* clean. But are we focused on keeping our honor clean? MHAT IV results indicated the need to do better.

### A Look Inward

In May 2007, we convened a Values and Ethics Working Group made up of Marines of all ranks from across the Corps and charged them to recommend measures for better instilling our Core Values in Marines. To inform the group's effort, we brought in recognized experts in leadership, ethics, behavioral science, and mental health.

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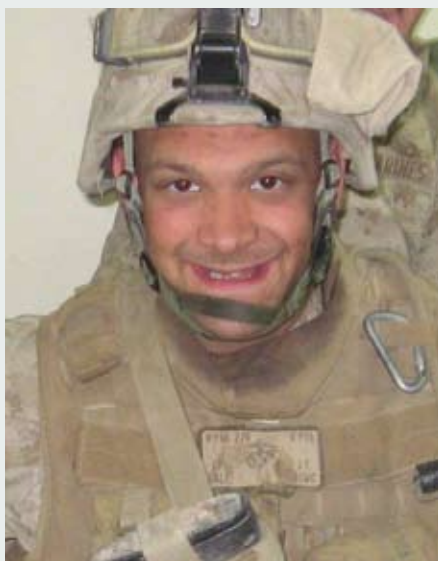
At the working group, a young captain offered a comment that illustrated the difficulty of targeting a time, place, and audience for ethics education. He cited two of his Marines—exemplary young men by his account—whose conduct under fire became the subject of investigation for ethical lapses. At the same time, another of his Marines, who entered the Corps under waivers for failure to meet enlistment criteria, has been nominated for the Navy Cross. In short, our ethical challenges *cannot* be associated with a readily identifiable “bottom 10 percent.”

This captain's point triggered important insights. First, the scope of our efforts could not be targeted at one group, but would instead be Corps-wide. Second, the all-impor-

tant effort made by drill instructors at recruit training should be viewed not as the culmination of the transformation from civilian into Marine, but as the beginning of a coordinated, continuous effort that must progress throughout a Marine's service.

A major in the working group asserted that the key to a strong Marine Corps is a sense of ownership in the Corps—being able to say, “This is *my* Corps now; let me show you what *I* do with it.” We agree wholeheartedly with the major. Ownership becomes possible only after recruits and officer candidates earn the title “Marine” and begin to live

by our values. Ownership is also central to our “strategic corporal” concept, which recognizes that the daily tactical decisions made by first-line leaders have strategic impact on the United States.



Cpl Jonathan T. Yale (above) and LCpl Jordan Haerter (right)



U.S. Marine Corps



The working group shed light on our most important issues, for which we remain grateful. Their work convinced us to look more deeply into ethical issues. We did so through two survey efforts, one focusing on the law of war (LOW), and the other more broadly on leadership and ethics. We also realized the need for some direct collaboration between Headquarters Marine Corps and our first-line leaders.

**Law of War Survey.** Our Marine Corps Center for Lessons Learned canvassed over 1,600 Marines of various ranks from around the Service to determine their understanding of LOW issues. Each Marine answered 12 basic questions and 13 grade-specific questions, developed by Marine Corps judge advocates. The latter questions focused more on policy as rank increased.

We are happy, but not a bit surprised, to report that Marines “get it”—from the oldest to the youngest. General James Mattis provides a great example of a LOW-trained Marine in action when he describes a foreign journalist’s experience with Marines under Mattis’ command in Iraq. The journalist came to General Mattis thinking Marines were all “Rambos” but left with a different opinion:

*Very close to us was a young Marine, down on one knee, watching an alley. There was shouting and shooting down one street, and we stayed back from that. . . . I eventually talked to this young [Marine], and he was 19 years old.*

*All of a sudden, [the journalist] looks over and plastered up against the wall is a big [woman] in a burqua . . . holding the hand of a little boy about knee high to a duck. All this shooting is going on, and they’re both obviously very scared. The Marine waved at the little*

*kid, who didn’t wave back, and then there was more shooting. A guy came running down the alley, and [the journalist] said that he turned to shoot back down the alley. As he got down to shoot, the Marine shot him, once in the shoulder, once in the head, dropping him right there not 15 feet away.*

*The Marine edged up to the little kid and handed him a piece of candy that he dug out of his pocket. . . . [The little boy] unwrapped it and stuck it in his mouth, and now he waved to the Marine, who went back on his knee watching over his buddies.*

*The Marine motioned to the lady that she could move on. The correspondent told me, that as far as she could see that kid walking, he would turn around to wave at the Marine, who had just done the worst thing you could ever do in front of a child, and no matter what that little kid is ever told, he is going to remember the Marine who gave him that piece of candy and waved. Now, think what that says about a 19-year-old who could discriminate.<sup>1</sup>*

General Mattis was extremely proud of that Marine.

**Leadership and Ethics Survey.** In the fall of 2007, Marine Corps University’s John A. Lejeune Leadership Institute (LLI) traveled to units around the Corps to conduct a leadership and ethics survey. The same survey has since been administered to a representative group of noncommissioned officers (NCOs) at the Russell Leadership Conference. It has also been administered at the request of our Recruit Training Depot commanders and the commanders of deploying battalions.

As was true with the LOW survey, the results were heartening. These young men

and women have taken their Service’s values on board. They take responsibility for their own actions, display trust in their chain of command, and refuse to tolerate unethical practices among fellow Marines.

As always, there is work to do. As we all know, Marines take their oath of office seriously, but they are also intensely loyal to one another. The survey asked, “If you believe torture is being used to obtain information that could save the lives of captured Marines, would you report it?” Their responses varied and in many cases indicated uncertainty, which we anticipated because the scenario was an unpleasant one.

But the answer was not complex, and we need to arm Marines to see the difference between answers that are complex and answers that are easy to understand, but hard to accept. Our Marines need to be loyal to one another and to the Corps, but their greatest loyalty must be to the Constitution and the principles that undergird it. The American public expects no less from keepers of the flame.

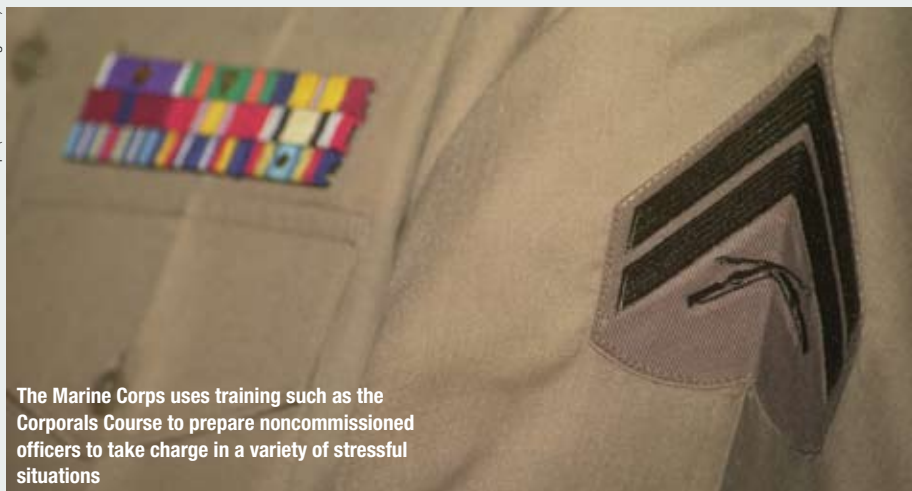
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#### **2008 Russell Leadership Conference.**

The Values and Ethics Working Group recommended the creation of a forum for communicating directly with first-line leaders in a conference setting. In response, we tasked LLI to make it happen.

The resulting Russell Leadership Conference, named for John Russell, our 16<sup>th</sup> commandant, was a first of its kind. While previous conferences sought answers from senior NCOs and commissioned officers, the 2008 Russell Leadership Conference was designed to let young NCOs speak for themselves. To accomplish this task, LLI brought over 200 corporals and sergeants from across the Corps to Marine Corps University in Quantico, Virginia. The conference’s goals were to accelerate internalization of our values among NCOs, to provide attendees the newest tools to use in ethics training in their units, and to gather lessons learned to use in our training and education organizations. The conference’s format blended hard skills training, collegiate lecture, and gaming. Throughout the conference, LLI personnel took notes and actively sought out NCO perceptions on issues such as mentoring and values.

U.S. Marine Corps (Brandon R. Holgersen)



The Marine Corps uses training such as the Corporals Course to prepare noncommissioned officers to take charge in a variety of stressful situations

The enthusiastic response from participants helped us chart the course for leadership development. We gathered unvarnished opinion and recommendations from NCOs, gave leading-edge instruction to our first-line warfighters, and provoked thoughts on issues that we hope will yield a group of leaders who mature more quickly in their roles as keepers of the flame.

### To Hold the Torch High

We had our work cut out for us. We learned that our efforts would begin on the day our recruits first stood on the yellow footprints at Recruit Training Depots and would continue through the duration of their service. We learned that our target audience would be every man and woman in the Corps today. Our effort needs the traction and clarity that come from relevance, and our Marines need to take ownership if our success is to last.

**Changes to Entry-level Training.** In the 1990s, at Marine Corps Recruit Depots Parris Island, South Carolina, and San Diego, California, we introduced the Crucible. The Crucible subjects recruits to 54 hours of physical and mental rigors made more difficult by the deprivation of food and sleep. As the culminating trial of recruit training, the Crucible requires individuals to make decisions and take actions based on the honor, courage, and commitment that bind individual Marines into a Corps.

We have now added even more depth to the effort behind transformation. We began with the single most critical factor in the development of a basic Marine—the Drill Instructor (DI). We adjusted DI training, anchoring the DI leadership role in representing and instilling Core Values in the recruits. We adjusted our recruit training sequence by increasing the length of values training from 14 to over 40 hours. With this time, we tasked the DI to introduce the values to recruits in a formal setting, to discuss them during “footlocker talk” seminars, and reinforce them daily by example. Symbolically, the DI participates in the Crucible alongside recruits as an exemplar of honor, courage, and commitment. By weaving values instruction throughout recruit training, the DI provides recruits with the basis for more thorough recognition and acceptance of Core Values than ever before.

We exported these methods to our other entry level training organizations. We added 11 hours to combat instructors’ discussion time during Marine combat training at our schools of infantry. We have built a parallel program at

officer candidate school and the basic school, and these focus on the lieutenant as both a reinforcer of values and a values-based leader.

These first formative days in a Marine’s service are profoundly important. We have seen it on the faces of recruits as they receive their well-earned Eagle, Globe, and Anchor emblems following the Crucible. For the first time, DIs address these young men and women not as recruits, but as Marines. As they grasp the Eagle, Globe, and Anchor in their palms, these new Marines also accept as their own the legacy of the Corps and our values of honor, courage, and commitment. We allow few people to observe this bellwether moment, but the transformation is palpable. Our most recent efforts promise to make the transformation steadier, more extensive, and more beneficial to the Marine, the Corps, and the Nation.

**Values-based Training.** While the specifics of Core Values training are best suited to Recruit Training Depots and other formal educational settings, values-based training (VBT) is a larger construct that can be delivered in a variety of formal and informal settings throughout the Corps. VBT describes the method by which we thread our values throughout a Marine’s career. It encompasses the foundational aspects of the training and education continuum that prepares Marines to make ethical and moral decisions over their careers and throughout their lifetimes.

VBT design required a comprehensive review and alignment of instruction, policy, and leadership doctrine in order to produce Marines whose actions in combat, garrison, and society are firmly guided by honor, courage, and commitment. To implement VBT, we instituted extensive changes in our schools. Training and Education Command is formalizing the development of VBT skills at officer candidate school, the basic school, and all of our enlisted professional military education courses (corporal courses, sergeant courses, staff NCO academies, and first sergeant courses). At each course, the instruction will be tailored to meet the demands of leadership for the Marines in attendance.

VBT is intended for implementation in less structured environments as well. The Marine Corps Martial Arts Program (MCMAP) represents one of our earliest and finest examples of VBT in action. As MCMAP instructors throughout the Corps teach hand-to-hand combat techniques, they also inculcate principles of the use of force and restraint. More importantly, the instructors discuss the

linkage between these principles and our Core Values in order to bring an everyday context to honor, courage, and commitment, and they do it across the Corps at the small unit level.

In the same manner that our Recruit Training Depots now implement Core Values training in a more continuous, comprehensive manner, VBT promises to do the same throughout the individual Marine’s service. As a result, Marines will benefit from the explicit reinforcement of values that have been implicitly promoted throughout the Corps’ history.

The American public holds high expectations of its Marines, both in combat and at home. In this, we must remain aware of the great trust and responsibilities placed on us and periodically reassess our fidelity to them.

Our most recent assessment of the situation drives us to solutions that are, for Marines, time-honored. We depend on our warfighters, especially our NCOs, for good advice on how to succeed. Their answers are basic but are not to be taken for granted. Responsibility, accountability, and ownership were words we heard again and again as we “took the pulse.” As we serve with this latest generation of Marines, it is our obligation to ever employ them as strategic corporals—they deserve this single standard.

The colors have been passed to a new generation, one worthy of the title Marine and of our past legacy. The men and women of today’s Corps stand shoulder to shoulder with those who have gone before with a proud and deserved reputation of honorable and heroic service to the Nation. At all levels of the Corps, these leaders are truly keepers of the flame. Through our continuous dedication to our Core Values and focus on our warrior ethos, we will ensure that the flame continues to burn brightly into America’s future. **JFQ**

This article was prepared with the assistance of Lieutenant Colonel Michael Parkyn, USMC, Lejeune Leadership Institute, Marine Corps University.

### NOTE

<sup>1</sup> James N. Mattis, “Ethical Challenges in Contemporary Conflict: The Afghanistan and Iraq Cases,” lecture delivered at the U.S. Naval Academy, n.d., available at <[www.usna.edu/Ethics/Publications/MattisPg1-28\\_Final.pdf](http://www.usna.edu/Ethics/Publications/MattisPg1-28_Final.pdf)>.

# Ethical Challenges for Commanders and Their Chaplains

By JOHN W. BRINSFIELD  
and ERIC WESTER



Imam and Army chaplain talk after meal at Baghdad mosque

Navy command chaplain counsels Sailor aboard USS *Monterey* while under way in Gulf of Oman



U.S. Navy (Remus Borisov)

Since the beginnings of our respective military Services, commanders expected their chaplains to be both religious and ethical leaders. Commanders relied on chaplains to reinforce Servicemembers' spiritual strength, commitment, cohesion, morale, and moral discipline. This expectation has always been grounded in the role of professional clergy in larger society. Chaplains are clergy endorsed and sent by recognized denominations and faith groups representing the religious communities of our nation.

The idea of clergy serving as ethical leaders is expressed in Jewish, Christian, and Muslim thought, as well as in most other religious traditions. Clergy, including those serving in uniform, constitute a conduit for divine law through teaching, action, and example. It is not surprising, therefore, that some of America's premier military

commanders—including Generals George Washington, Andrew Jackson, Ulysses Grant, John Pershing, and George Patton—looked to chaplains to support and reinforce good conduct “for God and Country” among troops. Moreover, faith groups that send chaplains to the military expect them to admonish Soldiers, Sailors, Marines, and Airmen to exemplify high ideals of personal behavior as an extension of American values at home.

Historically, chaplains exert moral leadership and influence through preaching, counseling, teaching, writing, and personal example. Since 1861, Army chaplains have also been directed by regulation to advise their commanders “on the moral and religious condition” of the troops, with “such suggestions as may conduce to the social happiness and moral improvement” of the unit. Current Army regulations specify simply that chaplains will advise the commander and the staff on matters of “religion, morals, and morale.”

Until the Vietnam War, chaplains' moral leadership activities were largely focused on the individual enlisted Servicemember. Chaplains helped combat drunkenness, venereal disease, gambling, disorderly conduct, racism, sexism, and a number of other dysfunctional behaviors. After the My Lai massacre in 1968, which led to 12 officers being indicted (including 2 generals and 4 colonels), the ethical focus of the Army enlarged exponentially. Ethics courses for officers were inserted in military education from West Point to the U.S. Army War College. Instructors for these courses were originally chaplains, almost all with combat ministry experience. The Tailhook scandal of 1991–1992 resulted in the forced retirement of two rear admirals and persuaded the Navy to look again at its ethical programs. One result was the

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1995 publication of *Readings in Philosophy and Ethics for Naval Leaders*, designed for Naval Academy Midshipmen.

Current post-9/11 operations in Iraq and Afghanistan again challenge commanders and chaplains to look at ethics in a new light. Forces serve amid cultures that do not separate religion, politics, and ethical norms. Ethical advice by chaplains to commanders takes this context into account. For example, Army and Navy chaplains who meet with indigenous religious leaders may find themselves engaged in what has been called “Track Two Diplomacy.” It is defined by the U.S. Institute of Peace as “unofficial, informal interaction between members of advisory groups or nations which aims to develop strategies, influence public opinion, and organize human and material resources in ways that might help resolve conflict out of public view and without the requirements to formally negotiate or bargain for advantage.”

Chaplain involvement in such liaison activities is recognized in Joint Publication 1–05, *Religious Support in Joint Operations*: the “joint force chaplain, after careful consideration and only with the joint force commander’s approval, may serve as a point of contact to host nation civilian and military religious leaders, institutions, and organizations, including established and emerging military chaplaincies, through the civil-military operations center.” Numerous chaplains of the three Services have been

effective work the U.S. military has conducted with the local populace.

Though multitrack diplomacy (Track Two and Track Nine) conducted by joint force chaplains acting under their commanders’ direction has paid dividends in terms of human relationships, concerns have arisen with ethical and diplomatic implications. Some imams and mullahs do not wish to interact with American military chaplains; one reason is the risk of imams and mullahs becoming targets for terrorists. Questions also surfaced about the meaning to indigenous clerics of informal diplomacy and having military forces as the principal agents of humanitarian work in the midst of military operations in the same area.

Captain George Adams, a senior Navy chaplain, listed some considerations involved in sponsoring extended chaplain work with indigenous religious leaders and the indigenous population:

- Even the best chaplains have limited language skills and cultural understanding, especially when a village may have pluralistic religious groups competing with one another.

- Chaplains are usually not trained negotiators.

- Chaplains are typically not assigned to an area for a long period and may not be able to follow through on expectations from local populations.

- Meetings with indigenous religious leaders may present security concerns.

- U.S. military chaplains represent many diverse religious groups, some of which do not view interfaith dialogue as appropriate.

- Chaplains usually interact with leaders of local communities, not with national leaders. However, a local religious leader in Iraq and Afghanistan can have significant local influence.

If one had to summarize these considerations, perhaps they could fall into a general category of taking care lest our intentions in nationbuilding are misunderstood and expectations of indigenous leaders and their people are frustrated by factors beyond our control.

There are many other ethical considerations for commanders and chaplains engaged in bringing peace to Central and Southwest Asia. There are obvious tensions between trying to win the hearts and minds of people at one moment and directing drones against targets in their midst in the next. Yet commanders and chaplains must not yield to overwhelming complexities, but clearly understand that ethical issues in the war on terror are intertwined with diplomatic, political, and military issues as well. To date, many deployed chaplains have served their commanders and their country well in trying to build relationships for a stable peace. But the complexities of advising commanders about “religion, morals, and morale” go far beyond an ethical checklist, moving toward a multilayered spreadsheet of possible implications. **JFQ**

### *current operations in Iraq and Afghanistan challenge commanders and chaplains to look at ethics in a new light*

engaged since 2003 in establishing prayer meetings, breakfast or lunch meetings, and formal discussions with mullahs regarding renovations of mosques, schools, museums, and other public buildings. In one case, Army Chaplain Larry Adams-Thompson conducted chaplain-mullah meetings and advised his commander about using \$1 million in Commander’s Emergency Response Program funds. Chaplains across Afghanistan had used these funds in school construction projects that they organized with local mullahs. John Finney, the Combined Joint Task Force–180 political advisor, said that dialogue between chaplains and imams was some of the most

U.S. Air Force (Jim Varhegyi)



**Navy chaplain listens as relief agency official describes situation at internal displaced persons camp outside Kabul, Afghanistan**

# Ethics and Intelligence

By WILLIAM M. NOLTE

**T**he phrase *ethics of intelligence*, with *intelligence* understood to mean espionage and related activities, may seem oxymoronic.

For most of the history of what has been called the world's second oldest profession, that sense of incongruity would be justified. Intelligence services have long been instruments of regime survival, often on behalf of regimes willing to take an anything-goes approach to that survival independent of any electoral mandate. Even in societies with relatively significant popular involvement in government, England in the 18<sup>th</sup> and 19<sup>th</sup> centuries, for example, intelligence was truly a "secret service," an instrument of the Crown to be shielded from scrutiny and bound ethically to little more than serving the monarchy.

Even with the emergence of democratic, constitutional government, this situation was slow to change. For the United States, the way to deal with the incompatibility of espionage with democratic government was largely to eschew espionage. From the Revolution, to be sure, American leaders from George Washington on understood the importance of military intelligence (seen largely as reconnaissance) and would even resort to the use of spies, secret writings, and other methods. But these activities were considered as aberrational as war itself, with commensurate and temporary adjustments to standard norms of behavior.

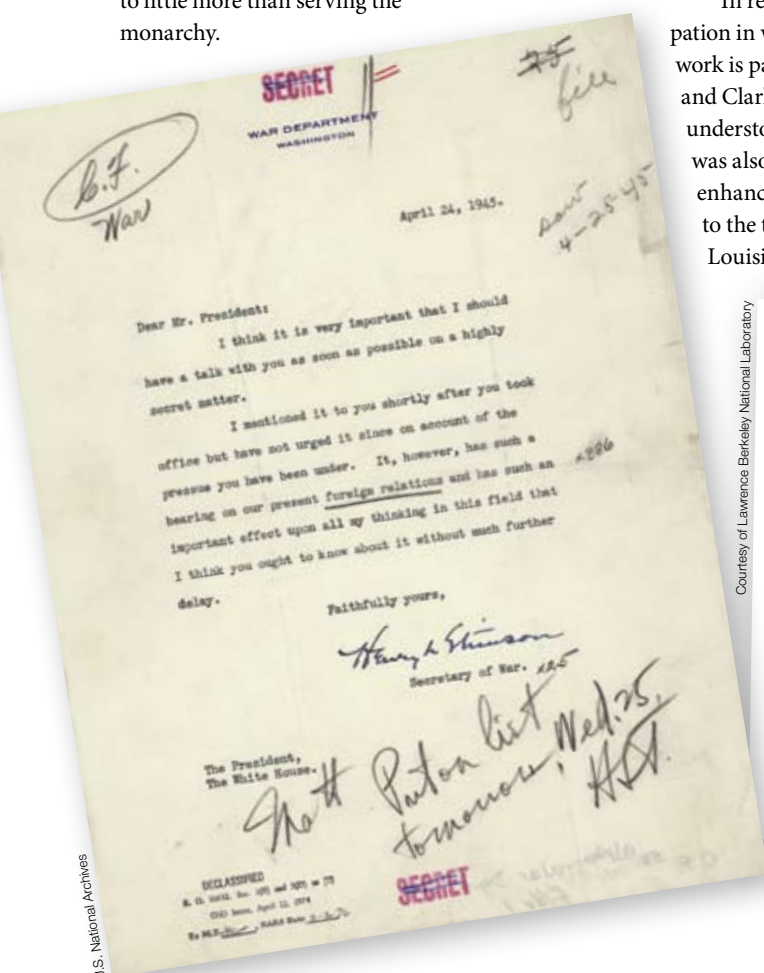
## Historical Context

In retrospect, American participation in what constitutes intelligence work is part of our history. The Lewis and Clark expedition is generally understood as one of exploration. It was also an intelligence operation, enhancing the Nation's claims to the territories included in the Louisiana Purchase and providing

leaders with mapping and other information considered essential to westward growth. For much of the 19<sup>th</sup> century, two of the principal missions of the Navy were hydrographic and astronomical, for purposes both scientific and operational. Even to the turn of the 20<sup>th</sup> century, a major function of American military intelligence was the collection or creation of maps and other geographic documents. A generation accustomed to Google maps may find it hard to believe that the Duke of Wellington's first charge to intelligence—to reduce uncertainty of what lay over the next hill—remained an often unsolvable problem until well into the last century.

Even when the United States accepted the idea of intelligence, largely in a military context, an aversion to secrecy and spying remained part of the American experience. As recently as 1929, Secretary of State Henry Stimson, upon learning that his department

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Courtesy of Lawrence Berkeley National Laboratory



Robert Oppenheimer (left), Enrico Fermi (center), and Ernest Lawrence were advisors on Interim Committee charged in early May 1945 by President Truman to recommend proper use of atomic weapons



was funding a codebreaking operation—one that had achieved spectacular success against Japanese ciphers in the 1920s—reacted not by awarding medals and honors, but by shutting down the operation on the grounds that “gentlemen do not read one another’s mail.” Twenty years later, Dwight Eisenhower, at that time retired from the military, noted that “the American public has always viewed with repugnance everything that smacks of the spy.”<sup>1</sup> Only a few years before, Eisenhower had benefited from the activities of spies and other intelligence operatives, as he would again as President.

By the end of the Eisenhower Presidency, in fact, the United States hosted the largest, most complex, and most technologically advanced intelligence establishment in history, one that has only continued to grow. How, then, do we discuss the *ethics of intelligence*, defined here to include the collection and analysis of information by human and technical means, counterintelligence, and covert action?<sup>2</sup>

### Ethical Considerations

Before turning to the ethical considerations associated with these functions, we should note several basic reasons why intelligence must operate within an ethical framework. First, there exist those considerations that apply to any branch of public service—that public servants must not confuse *public* interest with *personal* interest. This fundamental ethical requirement is enforced by laws proscribing the use of public office for personal gain, as befits persons in careers involving stewardship or a fiduciary capacity.

Second, intelligence is empowered to take actions *in the public’s interest and in the public’s name* that are prohibited to the public at large. Public servants may, under defined circumstances, inflict bodily harm or even lethal force on another human being, deprive others of basic liberty, or seize private property. As this applies to intelligence services, public servants may infringe on private communications, may lie and deceive, and may even interfere in the internal affairs of nations other than their own. How, then, do we limit or regulate such authorized but extraordinary behavior?

In establishing a framework in which to think about the ethics of intelligence, the just war tradition provides important analogies. Within this tradition, one can suggest three options in confronting the moral questions

raised by war, that is, the societally sanctioned use of violence for public purposes. One can argue that “all’s fair in war,” thus maintaining that war and morality are so incompatible as to preclude serious discussion. This is the realist tradition. At the other extreme, one can take the pacifist position that war can never be morally justified.

us. For 21<sup>st</sup>-century intelligence, in service to democratic and constitutional regimes, ethical norms are essential both because intelligence serves as an extension of the coercive power of the state and because of an emerging understanding that intelligence cannot be exempt (or exempt itself) from the norms imposed on other public services.

*by the end of the Eisenhower Presidency, the United States hosted the largest, most complex, and most technologically advanced intelligence establishment in history*

Between these two positions, it can be argued that war is justifiable, subject to certain criteria, usually including a right of self-defense, the role of competent authority in the decision to use violence, and the employment of methods of defense proportional to the situation.<sup>3</sup> The analogy with intelligence is this: if war can be justified under these conditions, can that same justification apply to intelligence and all it entails?

For our purposes, the ethics of intelligence in czarist Russia (or Elizabethan England, for that matter) do not concern

Among those norms is the requirement that intelligence services must operate within the law and not only under the oversight of the President in his role as head of the executive branch, but also subject to supervision and review of legislative and even judicial officers. This was not always clear even within the relatively short history of the modern American peacetime intelligence apparatus. Well into the Cold War period, a U.S. Senator who raised the question of congressional oversight was chastised by a colleague who argued, “There are things my government does I



National Security Agency Headquarters

NSA



would rather not know about.” Such oversight as occurred before the end of the 1970s was led by a very small group of senior committee chairmen who treated intelligence *unlike* any other governmental function.

### Major Functions

Before returning to the issue of how a democratic public can be assured that intelligence services acting in their name operate within that public’s values, we should examine in at least some detail the ethical considerations inherent in the major intelligence functions of collection, analysis, counterintelligence, and covert action.

Intelligence collection, like combat, can take many forms, from the equivalent of “bombing at 30,000 feet” to hand-to-hand fighting. In the collection of human intelligence (HUMINT), the direct, personal involvement of intelligence case officers with a prospective “asset”—whether that asset has been recruited by the officers or their agency, or is a “walk-in” who initiates contact without being recruited—creates real ethical issues. First of all, a measure of deception has already taken place in the situation of case officers who almost certainly are not who they claim to be. Whether case officers are working under official

or nonofficial cover, they employ a manufactured legend of name, occupation, and other details.<sup>4</sup>

The defining characteristic of the collection of HUMINT is direct contact with another person, who has either been recruited or has volunteered to betray his government. (Whether the asset sees this as a betrayal of a more fundamental loyalty to country, people, or nation can be a different story.) If HUMINT case officers are not suborning treason, they are at least facilitating it. Moreover, the transaction in most cases exposes the asset to consequences far more severe than those to which case officers are exposed. There is a difference after all in being expelled from a country as *persona non grata* and being executed for treason. (This is not, by the way, intended to deny the risks undertaken by case officers, or to devalue their courage. The issue is relative, as it applies to most cases.)

In the event of recruitment, the ethical issues may become even more fundamental as case officers attempt to gain the trust of the potential asset by flattery, expressions of friendship, or other inducements. Moreover, the deception employed by case officers will in many instances involve engaging the officers’ families in the deception, as to what their names are, where mothers or fathers work, and so forth. On the one hand, it can be argued that it is impossible to conduct such behavior within an ethical framework. On the other hand, it can be held that life in this environment *requires* such a framework, not only for operational reasons but also to sustain the psychological and even moral health of case officers.

Here the structure of the just war tradition, applied to intelligence, is useful. Is the deception required for the defense of the Nation as it is at war, threatened by war, or trying to prevent war? It was often said during the Cold War that intelligence, including covert action, was necessary to provide leaders with some level of response short of “sending in the Marines.” As the first generation of leaders to confront the reality that any armed conflict could escalate to nuclear war, it is not surprising that from Harry Truman through the end of the Cold War, American and Allied leaders

looked for those other options, and they had not only cause to conduct intelligence but also the power.

The final principal characteristic of the just war tradition is proportionality. Even in self-defense and when properly authorized, this tradition does not condone an anything-goes operational environment. Is it ethical to engage an asset—at the risk of that asset’s liberty or even life—to prevent a nuclear exchange between superpowers? That would seem a proportional response and finds expression in the case of Oleg Penkovsky, the GRU (*Glavnoye Razvedyvatel’noye Upravleniye*, or Main Intelligence Directorate) officer who provided information to the West before and during the Cuban Missile Crisis, but who was then arrested and executed. It applies as well to the lesser known case of Colonel Ryzard Kuklinsky, the Polish staff officer who furnished detailed information on Polish and Warsaw Pact plans to deal with the rise of Solidarity in Poland during the 1980s.

If HUMINT is the analogy to hand-to-hand combat, technical intelligence is the equivalent of bombing at 30,000 feet. It has consequences, even fatal ones, but does not traditionally involve the direct contact that HUMINT does. The codebreakers at

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*there is a difference in being expelled from a country as persona non grata and being executed for treason*

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Bletchley Park during World War II may have known at some level that their successes had direct military consequences, but the remove from their work to application was significant. It is worth noting that the biographer of William Friedman, the “father of American cryptology,” believed Friedman’s psychological and emotional health suffered from the understanding that his elegant art form (or science) was being used for eavesdropping and military actions.<sup>5</sup>

In recent decades, technology has revolutionized technical intelligence beyond its mid-20<sup>th</sup>-century uses in cryptology and what was, in an earlier time, photointelligence. Signals communication across the Internet is ubiquitous, and imagery intelligence has moved within a generation from the highest of secrets to a commercial industry. In technical intelligence as in HUMINT, the



NSA

William Friedman, the “father of American cryptology”

first ethical rule must be a basic one: obey the law, at least the laws of the country for which one is employed. For Americans, that has meant a rather clear prohibition against collecting technical intelligence on American citizens or an even broader category in law of “United States persons,” the latter to include visitors legally in the Nation, corporations, and others. It is important to note, however, that limitations on imagery intelligence are somewhat less clear, in part because the expectation of privacy surrounding pictures—of homes, workplaces, and so forth—is lower than for communications. The National Geospatial-Intelligence Agency (NGA) drew little criticism for its support in mapping the consequences of Hurricane Katrina. More recently, on the other hand, plans from the Department of Homeland Security to use imagery more aggressively drew significant public and congressional attention. Everyone in every municipality in the United States knows, moreover, that the use of radar or cameras for traffic enforcement can be a volatile issue. Americans even have the extraordinary capacity to remark how safe they felt on vacation in the United Kingdom, with closed circuit television on every High Street, while professing to be uncomfortable with similar efforts here. In an age when technology simultaneously provides unprecedented means for the transmission and storage of data of various kinds but challenges many aspects of privacy, continued public debate over the nature of privacy in the 21<sup>st</sup> century is clearly inevitable.

Largely, then, the ethical issues in technical intelligence, while still involving the just war concerns of self-defense, proper authority, and proportionality, revolve around a public determination of what measures we may legally permit to deal with a perceived threat to our national security and well-being. It is not necessary that the employees of the National Security Agency (NSA) on the one hand, or the members of the American Civil Liberties Union on the other, agree whether the revised Foreign Intelligence Surveillance Act represents the perfect answer to a set of difficult questions. The more important reality may be that the statute is the outcome of an extended public discussion of the act and its implications.

Analysis has its own ethical considerations, and these largely involve applying the desire to bring truth to power. As often noted, on the wall of the Central Intelligence

Agency (CIA) headquarters building is the inscription, “Ye shall know the truth, and the truth shall make you free.” Unfortunately, no one has yet developed the formula by which an intelligence analyst, let alone a whole agency or set of agencies, can know the truth, the whole truth, and nothing but the truth. No analyst in my acquaintance ever received a crystal ball from the supply room. Every analyst has been enjoined to emphasize objectivity and to avoid bias, but the reality is that every analyst—in intelligence, in law, in medicine—brings biases to the case at hand. An emergency room physician, knowing that a life-threatening disease may have many of the same symptoms as a simple case of influenza, but experiencing influenza 500 to 1,000 times more frequently than the life-threatening disease, is highly subject to being fooled by the exception to the rule. In this case, bias, understood as the formation of conclusions based on the accumulation of data, is both unavoidable and efficient. What would happen to waiting times in the emergency room, not to mention to costs, if a doctor overrode the evidence of hundreds of “routine cases” and ordered extensive tests on every patient to rule out the “1 in 100” or “1 in 1,000” occurrence?

Intelligence analysts use bias in the same way and are therefore subject to the same vulnerability to nonlinear or aberrational events. An analyst who in 1990 had approached colleagues preparing a National Intelligence Estimate on the future of the Soviet Union by suggesting that it would simply go out of business, devolving the Baltics and the Central Asian Republics, and renouncing the political monopoly of the Communist Party, would have been hard pressed to provide evidence to support such an outcome. Even as “an alternative outcome,” that panacea of intelligence reformers, would this outcome have had credibility? Or would it have been dismissed, in large part because the analyst would have found it hard to produce “evidence” supporting that alternative?

Much has been made since 2003 of the politicization of analysis, and the collateral mistake of policymakers in “cherry picking” analysis. First and foremost, *politicization*, that is, the distortion of analysis to fit a desired policy or political outcome, must be considered the cardinal sin of analysis. To a great degree, politicization can only be done *within* the intelligence agencies. Once the intelligence reaches policymakers, they will

read, react to, and interpret the intelligence within the framework of policy preferences, prior experience, and personal intellectual (or ideological) preconceptions, reform efforts notwithstanding. It is at least possible that intelligence analysis can change the mind of a policymaker. But this cannot be predicted, and it certainly cannot be legislated. Finally, an analyst or even an analytic agency may fall into the same conventional (though incorrect or obsolete) wisdom shared with policymakers. Analysts and policymakers, as the phrase

*analysis has its own ethical considerations, and these largely involve applying the desire to bring truth to power*

goes, may be “drinking the same Kool-Aid.” This may have taken place in the period before the American invasion of Iraq in 2003, as analysts and those they served concluded (correctly) that Saddam Hussein was continuing to hide information on his weapons of mass destruction (WMD) programs from the international community. One failure here, among others, was not considering that Iraq

Central Intelligence Agency



Some accused former CIA Director George Tenet of “cherry-picking” information to formulate assessment that Saddam Hussein had weapons of mass destruction



was concealing not how *capable* its WMD programs were but how *incapable*. Similarly, before World War II, intelligence analysts and policymakers drew similar conclusions on what Japan would and could do based on woefully incorrect and stereotyped assessments of Japanese power, intelligence, and even physical capability.<sup>6</sup>

In the end, analysts can only put their best assessment before the policymaker. More often than not, analytic failures result not from “giving the policymakers what they want to hear,” but from sharing the intellectual and conceptual misconceptions of the policymaker, as described above, or from a failure to inform the policymaker about the limits of the information base on which judgments have been made. In the period since enactment of the Intelligence Reform and Terrorism Prevention Act, the U.S. Intelligence Community, through the Analytic Integrity Officer,<sup>7</sup> has been more explicit in defining

standards for analysis, going beyond the noble but sometimes troublesome “truth to power” business. None of these will eliminate the possibility of analytic error or failure, but they provide empowerment to analysts pressing unpopular views and a greater transparency for policymakers.

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*in the end, analysts can only  
put their best assessment  
before the policymaker*

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One final ethical consideration for analysts is that presented by their relationship with collectors. Most analysts work for agencies that are, at their bases, collection agencies, whether the collection source is human or technical. In a single-source context, NSA or NGA analysts, for example, process the results of signals or imagery collection. They are, in the end, the output mechanism for

the collection and processing of information received through that source. In the all-source environment, whether within a single all-source agency (CIA, Defense Intelligence Agency, and the Department of State’s Bureau of Intelligence and Research) or within community-based efforts (predominantly the National Intelligence Council), analysts need to be prepared to distance themselves from their “own” collection sources. That is to say, they have an ethical responsibility to look for the best and most accurate information, whether that information comes from their parent agency, another agency, or from open source information. They must avoid the bureaucratic temptation to become marketing representatives for the intelligence collection method they serve.

Counterintelligence, the function of preventing others from doing unto us what we hope to do unto them, presents variations on themes already discussed. Counterintel-



Strategic Air Command intelligence officers interpret reconnaissance photo during Cuban Missile Crisis, 1962

U.S. Air Force



ligence case officers (or case officers pursuing counterintelligence as part of an integrated mission) and counterintelligence analysts confront many if not all of the issues that their counterparts in other parts of the intelligence agencies deal with. In the narrower field of counterespionage, rather than the full counterintelligence agenda of understanding the intelligence structures, capabilities, and operations of foreign services, unique ethical issues arise. In large part this is because counterespionage, in confronting the possibility that a citizen or even an employee of one's own intelligence service has gone over to a foreign service, raises both ethical and legal issues of real importance.

Most obviously, espionage on behalf of a foreign power is a crime in the United States and presumably in every other country. In the American context, this means investigations must be conducted along established lines involving presumption of innocence and other considerations. At the operational level, however, any counterespionage investigation is going to place under suspicion, at least initially, a relatively large set of persons who are innocent. If the investigation involves the discovery by a foreign service of a number of that country's citizens working on behalf of the United States, one of the first counterespionage questions would be: who knew of the presence of those assets?

The clear ethical (and legal) question here is the skill of the counterintelligence officers involved in culling through a potentially large number of persons initially capable of revealing the identities of those assets to the foreign service, in pursuit of the one (or perhaps two) persons actually involved. Within a service, the even harder trick can be to ensure that all those initially reviewed are cleared with minimal or no damage to their careers or reputations. The history of American counterintelligence suggests cases in which this has succeeded (as with Aldrich Ames), but also cases in which real damage has been done to innocent persons (as in the later Robert Hanssen case).

Counterintelligence is simply an essential activity of any professional intelligence service. At its most basic, there is no reason to go to great expense and risk to gather information if that information and the sources and methods that support the process are not protected. Nevertheless, counterintelligence and counterespionage are inherently controversial. Counterintelligence is to intelligence

what an internal affairs bureau is to a police department. That it is necessary does not prevent it from being challenging ethically, legally, and even constitutionally. A popular culture that for generations portrayed Alger Hiss and the Rosenbergs as victims of Joseph

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*a highly developed ethical sense is critical for those who serve in the intelligence services*

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McCarthy, Richard Nixon, or a paranoid public has not helped. Nor, it must be added, was the United States well served in these cases by intelligence services that retained for far too long information (consider the Venona project) that would have challenged the view that Soviet espionage was merely a red herring. In more recent times, the activities of the Maryland State Police in seeming to categorize everyone from antiwar activists to opponents of the death penalty as potential terrorists have done much to reinforce the view that intelligence, especially counterintelligence and domestic intelligence, represents a threat to fundamental civil liberties not only in its errors and failures but also in its very being. A highly developed ethical sense is critical for those who serve in the intelligence services; at the risk of exaggeration, it may be *most* critical for those who serve in counterintelligence.

Perhaps even more controversial than counterintelligence is *covert action*, that is, actions undertaken by a government to deny its role in events *the fact of which* may be impossible to deny. (In contrast, clandestine intelligence consists of activities the fact of which a government wishes to conceal. A technical collection system operates clandestinely, for example; a crowd of protesters is, by definition, not a clandestine act, but the sponsorship and organization of the event may be the fact a government wishes to remain covert.)

Covert action ranges from propaganda (leaflets dropped into Nazi-occupied Europe mocking Adolf Hitler's parentage), to sponsorship of political groups and parties (as the United States did in Italy and France in the 1940s), to efforts to destabilize or change regimes, as the United States did in Iran in the 1950s and attempted to do to Saddam, off and on, for many years.

Once again, the just war analogy is useful. The first question in the use of covert action must be whether it is conducted under the auspices of proper authority. For the United States, this has meant for some years now that covert action must be undertaken after a "finding" by the President that such actions are important to American national security. Extending that proper authority, Congress must be notified of that finding. In other words, at no point in the future should covert actions originate in some odd part of the national bureaucracy, such as the National Security Council staff, as took place in the Iran-Contra affair. The United States has made at least one definitive statement on proportionality and covert action by banning U.S. involvement in assassinations.

Covert action will always remain an issue of ethical controversy. Is it essential to provide the President with a full range of options short of "sending in the Marines"? Where within the bureaucracy should covert action reside? Does its place in the intelligence establishment threaten to compromise intelligence-gathering and analysis? Or is the exposure of covert action potentially even more embarrassing to the State Department or Defense Department?

When reviewing potential covert action, decisionmakers must consider whether and for how long it can remain so. Even 50 years after the fact, it remains hard to believe that the U.S. role in the Bay of Pigs could have remained covert. If anything, changes in the news media since that time, and a breakdown in the media's willingness to accept the word of government officials that revealing information could harm national security, make the likelihood of a covert action remaining covert much more unlikely than in the 1950s or 1960s. The Afghan covert action after the 9/11 attacks nevertheless suggests that covert action can work and can retain a measure of "cover" long enough for that cover to support a successful outcome.

The second question is whether a given action should be undertaken covertly. One can argue that American support for anti-communist, moderately leftist political parties in France and Italy, through the CIA, was not only appropriate but essential. But in the 21<sup>st</sup> century, would the CIA be the appropriate instrument for such actions? We now have a fuller range of instruments—the Institute for Democracy, for example, or the international extensions of the Republican and Democratic

parties that assist in the development of political parties overseas. It would seem that a good rule of thumb would be to prefer overt actions where possible. In the years after the invasion of Iraq, for example, press accounts suggested that the Bush administration, faced with evidence that Iran was subsidizing various Shia parties and factions, considered funding

Finally, there is the issue of long-term consequence. I noted above that analysts do not receive crystal balls as part of their kit. Indeed, the United States interfered in the internal affairs of Iran in placing the Shah back on the throne. And, yes, decades later the Shah was overthrown, producing the state of U.S.-Iranian relations that continues

*any anticipated gain from the application of "extraordinary methods" of interrogation should be measured against the cost once those methods become known*

other groups to balance the scales. According to those accounts, this was abandoned for fear that disclosure of American support would discredit the very people we were trying to support or would expose the United States to accusations that we were meddling in Iraq's internal politics.

Given that we were occupying the country at the time, one would suggest that any concern for intervening in Iraq's internal affairs should have long since passed. Then why not, instead of abandoning the plan, do it *overtly*? That is, why not declare that foreign involvement in Iraq's electoral process would not be tolerated, provide an interval for compliance, and then announce that we would decertify parties receiving foreign support or at least even the scales with support of our own?

now into its fourth decade. But could either the policymakers authorizing the Iranian operation or the operators carrying it out have envisioned the next 25 years or so of Iranian or world history? That is clearly asking too much. It is reasonable that both policymakers and operators understand that covert action at least has the potential to initiate consequences that are long-term, unpredictable, and unintended. For example, although space does not permit a full discussion of the issues involving interrogation of prisoners, this subject exists at something of an intersection among human collection, counterintelligence, and covert action. Here are three brief points: first, renouncing torture and defining torture may be separate tasks, with the latter more difficult. Nevertheless, it is hard to avoid the thought that a good, albeit incomplete, line can be drawn at any technique that a nation has renounced either in principle or through the prosecution of persons for its application. Secondly, any anticipated gain from the application of "extraordinary methods" of interrogation should be measured against the cost once those methods become known. Finally, as in any profession with an ethical basis, intelligence officers must be prepared to confront the possibility that notwithstanding what their supervisor has told them, or even "what the lawyers have okayed," in the end they must rely on their individual ethical sense in deciding to participate in actions they consider unethical.

### Guarantors of Ethics

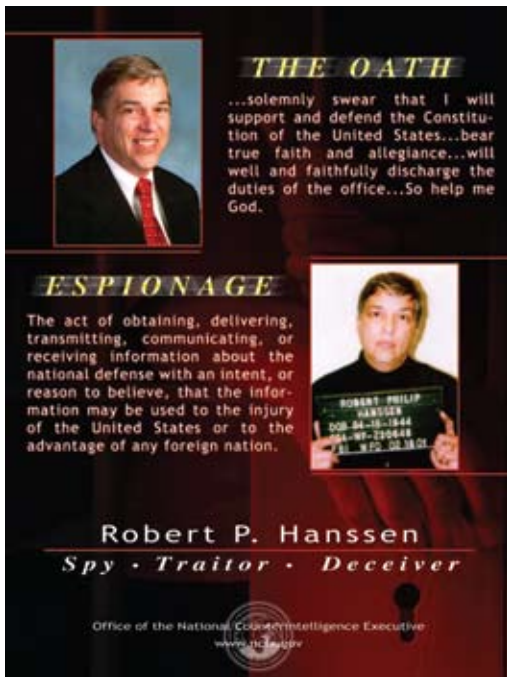
As noted, the discussion of the role of ethics and intelligence is not a traditional one. It should come as no surprise, therefore, that the ethical responsibilities involved in the oversight of intelligence have an even shorter history. But this still-novel process, by which a nation's most secret services come under

review by legislative or judicial authorities, places an ethical burden on both the overseers and those they oversee.

For overseers, the ethical responsibility must include a sense of the uniqueness and fragility of the oversight process and the governmental functions it reviews. And here, one must say that the American experiment in oversight has enjoyed great success. Not only have the congressional overseers of intelligence carried out their responsibilities to protect sources and methods with only limited failures, but they have done so with the confidence of the nearly 500 House and Senate colleagues for whom they serve as proxies. Members of Congress have an ethical responsibility to subordinate partisan interests to the national interest, and the record of the last 30 years suggests they achieve this imperfectly on the intelligence committees, as they do on the agriculture or transportation committees. One can even argue they have achieved it less imperfectly, never expecting that partisan politicians will ever fully fore-swear including partisan costs and benefits in their calculations.

Thirty years ago, the idea of congressional oversight was treated as either a novelty or an intrusion by intelligence professionals who could recall "the good old days," which may not have been all that good for the intelligence services or the Nation. Whatever one's opinion on that, oversight is clearly not a novelty and it is not going away. Director of Central Intelligence William Webster's admonition that he wanted CIA personnel to testify before Congress "completely, candidly, and correctly" remains a useful shorthand for the ethical responsibilities on the part of the overseen. Article I of the Constitution gives Congress control over all monies spent by the U.S. Government, and the three decades in which Congress was deficient in applying this to the intelligence agencies should be seen as what they were, part of the learning process by which the United States groped toward reconciling powerful, secret, and permanent intelligence services within the framework of a constitutionally based polity.

What about oversight beyond the congressional? The Intelligence Reform and Terrorism Prevention Act included a provision for a civil liberties protection board, which was for its day as novel as congressional oversight in the 1970s. The board quickly became a dead letter. It was nevertheless revived in 2007, and now the President and Congress must see how



FBI agent Robert Hanssen spied for the Soviet Union for over 20 years

Office of the National Counterintelligence Executive

this entity can work. Is it the start of a National Intelligence Review Board, however constituted and wherever attached to the Federal structure?

Within and beyond the United States, the issues associated with the proper role of intelligence alongside more traditional instruments of statecraft, predominantly the diplomatic and military instruments, continue to evolve. In the United States, the administration and Congress must deal with the issues of an intelligence establishment that carried out orders many now in positions of leadership find objectionable if not abhorrent. What to do? At one level, issuing new orders and interpretations while ensuring that the necessary oversight bodies are fully knowledgeable of proposed actions makes eminent sense. But should individuals in the intelligence services be held accountable—even criminally so—for carrying out orders from proper authorities? Does a democratic government really want its intelligence services overruling or ignoring opinions from the Department of Justice?

The above questions will undoubtedly be with us for some time. One point that perhaps needs to be emphasized for the men and women of the American intelligence services is that if they do serve within an ethical framework, they should understand that some day they may be directed to take an action they find abhorrent. It is at this point that the indoctrination (and there is no better word) in the values and norms of an ethically based service must engage. However the individual officer responds—by complying, by at least raising concerns, or by declining to comply—raises its own set of potential consequences. Ethical professionals should understand that from the moment they enter medicine, law, the military, intelligence, or any other profession worthy of the name.

Whatever the future holds for the subject of ethics and intelligence, we are past the point of speculating whether a relationship exists between the two. As former CIA director Michael Hayden said, American intelligence “must operate in the space permitted by the American people.” Achieving that goal will involve the development of intelligence services that place an ethical framework at the center of their professional identity. **JFQ**

## NOTES

<sup>1</sup> Dwight D. Eisenhower, *Crusade in Europe* (Garden City, NY: Doubleday, 1948), 32. Eisenhower became one of the most important of Presidents in his leading the development of American intelligence, especially technical intelligence. There may be some connection to his support of intelligence methods that at least “smack” less of the spy than does espionage as historically conducted. In the end, however, Eisenhower never lost his sense that espionage and other components of intelligence were at some level odious but nonetheless essential in a world that he described as living by rules less “sporting” than those to which Secretary Stimson referred a generation earlier.

<sup>2</sup> It is at least possible to consider covert action as part of the intelligence function only instrumentally; that is, covert action is often undertaken by intelligence organizations. It may not be inherently a function of intelligence organizations, and it certainly does not exist exclusively within the operational purview of such organizations.

<sup>3</sup> One could employ other ethical systems, but the just war tradition seems to provide the most usable transfer to intelligence. Immanuel Kant’s ethical approach, for example, with its categorical requirement—that if something is wrong, it is always wrong—leaves little room for the thought that secrecy and deception can be justified.

<sup>4</sup> Official cover means the officer is acknowledged as working for the United States (or another) government, but his intelligence connection is concealed by a diplomatic or other cover. An officer working under nonofficial cover denies any connection with government. Importantly, official cover provides diplomatic immunity from arrest; nonofficial cover does not.

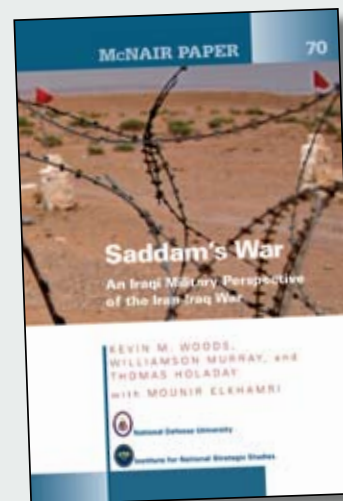
<sup>5</sup> William Clark, *The Man Who Broke Purple: The Life of Colonel William F. Friedman* (New York: Little, Brown, 1977).

<sup>6</sup> See Douglas Ford, “‘The Best Equipped Army in Asia’? U.S. Military Intelligence and the Japanese Imperial Army before the Pacific War, 1919–1941,” *International Journal of Intelligence and Counterintelligence* 21, no. 1 (Spring 2008).

<sup>7</sup> The Analytic Integrity Officer is a position established by the Intelligence Reform and Terrorism Prevention Act of 1974 (Title 1, Section 1019) to ensure that intelligence reports produced by the Intelligence Community are “timely, objective, [and] independent of political considerations.”



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### McNair Paper 70

#### *Saddam's War: An Iraqi Military Perspective of the Iran-Iraq War*

How did the fall of Saddam Hussein’s regime look from the Iraqi perspective? That question triggered the Iraqi Perspectives Project (IPP), sponsored by U.S. Joint Forces Command and the National Intelligence Council. The effort was named “Project 1946,” inspired by the research methodology used by U.S. Army historians working with former members of the German General Staff after World War II.

This McNair Paper covers a broad spectrum of Middle Eastern military history through the eyes of Iraqi Lieutenant General Ra’ad Hamdani, who held various command positions in the 1980–1988 war and, during Operation *Iraqi Freedom*, commanded the II Republican Guard Corps. Interviewed in depth by Kevin Woods and Williamson Murray over several days, General Hamdani shared his knowledge on a wide range of subjects, with emphasis on his experiences in Iraq’s long war against Iran. This volume is provided in the hope that it will improve our understanding of Middle Eastern military thought, the new Iraqi military, neighboring countries, and the dynamics of a region vital to U.S. interests.

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# A Long, Hard Fall from the Pedestal

By DAVID E. GRAHAM

**A**fter 37 years of practicing public international law in general, and dealing with the law of war in particular, I have had the opportunity to form close working relationships with numerous foreign colleagues. In meeting with these individuals in international forums post-9/11, the following scenario has become all too familiar. Spying me across the room, they rush forward—spilling coffee and tea in the process—and exclaim: “What are you people doing? What are you Americans thinking?” These are obviously more than rhetorical questions; they are posed in the form of accusations, laced with disappointment and, often, thinly veiled disdain. While these encounters have been numerous, one in particular has continued to

resonate. It involved a discussion with both European and Asian attorneys:

*We don't understand your government's thinking, David. None of us would deny the horrific nature of the events of 9/11, but these were, after all, even given their scale and scope, acts of terrorism. Our countries have suffered from terrorist acts for decades. Yet it is only now that the U.S. contends that 9/11 has “changed the world”—and, as a result, all of the rules applicable to that world.*

*In truth, however, the only thing “new” about your world is that terrorism has finally reached your shores. Rather than ushering in a “new” world, 9/11 has simply served to introduce you Americans to the*

*“real” world. This fact doesn't entitle your country to dismiss the “old” law, declare a global “war” on terrorism, and subsequently invent—and attempt to impose on the rest of the world—a self-serving set of rules. For example, suddenly, in your view, all terrorists are now “unlawful combatants,” and, as such, subject to what you euphemistically refer to as “enhanced interrogation techniques.”*

*And your actions are all the more troubling in the sense that, in terms of the law of war, you were the gold standard. You were the ones we looked up to. We had placed you on a pedestal.*

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Alberto Fernandez Fernandez

Ceiling fresco *Allegory of War and Law* in Austrian National Library, Vienna

As I have reflected on this conversation, I keep returning to the image of the United States on that “pedestal” of law of war training and compliance. In doing so, I think back to the pivotal event that gave rise to the concerted efforts made by the Department of Defense (DOD) over the past three decades to develop and implement a law of war program that truly did become a model for the rest of the world. This was the murder of innocent Vietnamese civilians by U.S. Army personnel at My Lai in 1968.

### My Lai and Its Aftermath

While the war crimes committed at My Lai caused great consternation and soul searching among Americans generally, the ramifications for DOD were even more far reaching. The Peers Inquiry, named after its senior member Lieutenant General William Peers, USA, conducted a comprehensive investigation of the circumstances surrounding the crimes committed at My Lai. Among the most significant findings was that inadequate training in the law of war had been a contributory cause of the killings that occurred.<sup>1</sup>

Acting almost immediately upon this finding, the Army, in May 1970, revised its regulation governing law of war training<sup>2</sup> to ensure that all Soldiers received more thorough instruction in the 1907 Hague and 1949 Geneva Conventions.<sup>3</sup> Of even greater importance, however, was the Army’s proposal that DOD create a department-level law of war program. This recommendation resulted in the 1974 promulgation of DOD Directive 5100.77, which established a unified law of war program for the Armed Forces.<sup>4</sup> This directive has been revised and updated over the succeeding 35 years, specifically spelling out law of war responsibilities for all DOD components, and now appears in the form of DOD Directive 2311.01E (May 9, 2006). This directive, in turn, has been implemented by successive Chairman of the Joint Chiefs of Staff Instructions (CJCSIs), currently CJCSI 5810.01B (March 25, 2002).

These documents have served to generate comprehensive law of war training programs throughout the Armed Forces. And it was these programs that were in place when the events of 9/11 unfolded. The United States had been atop the pedestal for over three decades, and there was no reason to believe that a long, hard fall from this envi-

able perch was in the offing. In retrospect, we were unduly confident in the continued certainty that we had learned the lessons of My Lai well.

As U.S. and allied states initiated military action against the Taliban government and al Qaeda personnel in Afghanistan on October 7, 2001, it was assumed by those planning and conducting this operation that the ensuing conflict would be international in nature—one to which the full scope of the law of war would apply. Accordingly, this law would include, as a matter of course, the 1949 Geneva Conventions and, consequently, all of the regulatory and doctrinal guidance that reflected the requirements of these conventions. Of primary importance within such guidance were two basic Department of the Army documents: Army Regulation (AR) 190–8, *Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees* (October 1, 1997), and Army Field Manual (FM) 34–52, *Intelligence Interrogation* (September 28, 1992).

international community at large. A commander—a Soldier—cannot be placed in the position of being told that, even though his intended course of action is lawful, it may not be the ethically correct thing to do. This firmly held belief was challenged, however, following the Bush administration’s decision to declare both al Qaeda and Taliban personnel seized in Afghanistan as “unlawful combatants,” to whom none of the protective provisions of the Geneva Conventions would apply.<sup>5</sup> While the legitimacy of this action continues to be a matter of significant debate, its impact was clearly one of considerable consequence. It was this decision that set in motion the precipitous fall of the U.S. military from its accustomed perch upon that aforementioned pedestal.

### Guantanamo

As Taliban and al Qaeda personnel arrived at Guantanamo Bay, the precepts of the pre-9/11 detainee legal regime—AR 190–8 and FM 34–52—were applied.

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*while the war crimes committed at My Lai caused great soul searching among Americans generally, the ramifications for DOD were even more far reaching*

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AR 190–8 detailed, in specific terms, the manner in which all categories of detainees held by U.S. forces were to be treated. FM 34–52 focused on the interrogation methods to be used when questioning all U.S.-held captives. Each document had undergone an extensive legal review, each reflected the requirements of the relevant provisions of the Geneva Conventions, and each represented the cornerstone of the training in these subjects that had long been provided U.S. military personnel. In brief, a well-established legal regime was in place at the onset of the military operation in Afghanistan, one that dictated how not only prisoners of war, but also all detainees held by the Armed Forces, were to be both treated and interrogated.

I have consistently challenged ethicists who argue that military personnel must engage in both legal and ethical considerations when conducting military operations. In their words: “Just because it’s legal doesn’t make it right.” My position has long been that, in fact, the law of war does reflect the shared values—the ethics, if you will—of the

However, over a period of time, anxious to gain actionable intelligence from these detainees, U.S. authorities developed a conveniently self-serving analysis concerning the continuing need to comply with this regulatory and doctrinal guidance. As the Geneva Conventions had been rendered inapplicable to these individuals, and as all relevant DOD guidance was driven solely by a U.S. legal obligation to comply with these conventions, it was reasoned that this guidance was no longer binding. Thus, “freed” from the legal constraints of the conventions, those tasked with securing intelligence information from the detainees could now seek DOD’s approval to engage in the “lawful employment” of “counter-resistance” interrogation techniques that far exceeded those methods sanctioned by FM 34–52.<sup>6</sup>

While the argument has been made that the “enhanced” techniques employed at Guantanamo were in truth driven from above, rather than from the joint task force that solicited their approval, their origin would be of little consequence to ethicists.



They would submit that, while legally sanctioned, the use of these techniques was clearly a violation of moral and ethical standards.<sup>7</sup> That is, even though the military personnel involved had been advised that their actions would be “lawful” in nature, ethical considerations should have prevented them from engaging in conduct that was clearly “wrong.”

in issue would have been adjudged unlawful per se; they would not have been approved. The relevant law did, in fact, reflect the ethical standards of the international community.

Having said this, however, available information clearly indicates that certain U.S. military personnel at various levels of command were willing participants in a

*a Soldier cannot be placed in the position of being told that, even though his intended course of action is lawful, it may not be the ethically correct thing to do*

This contention carries with it a certain appeal, but it is ultimately unconvincing. The “lawfulness” of the interrogation methods in issue was grounded on a transparently flawed U.S.-only interpretation of what was said to be the law exclusively applicable to the conduct in question.<sup>8</sup> Conspicuously absent, however, was any consideration of either the relevant principles of the customary law of war or other norms of codified international law directly related to this matter. Had this law been considered, as it should have been, no alternative ethical judgment would have been required. The interrogation techniques

process that led to the approval and use of interrogation methods at Guantanamo that clearly ran afoul of all prior training on this subject to which these individuals should have been exposed. Even more disturbing is the fact that while those engaged in such practices at Guantanamo may have acted with the assurance that their actions had been deemed lawful, the same cannot be said for U.S. personnel who abused detainees in Iraq.

#### Abu Ghraib

From the outset of the Iraqi conflict, the law applicable to the conduct of Opera-

tion *Iraqi Freedom* was quite clear. This was unquestionably an international conflict to which the full scope of the law of war, including the 1949 Geneva Conventions, applied. Equally certain was the fact that, given the applicability of the law of war, all U.S. regulatory and doctrinal guidance dealing with the treatment and interrogation of U.S.-held detainees would govern the conduct of U.S. military personnel. Given this reality, the question becomes how the abuses committed at Abu Ghraib and elsewhere in Iraq could have occurred.

The Schlesinger Investigation, one of a number of inquiries made into U.S. detainee abuse in Iraq, offered this explanation:

*[T]he changes in DoD interrogation policies . . . were an element contributing to uncertainties in the field as to which techniques were authorized. Although specifically limited by the Secretary of Defense to Guantanamo . . . the augmented interrogation techniques . . . migrated to Afghanistan and Iraq, where they were neither limited nor safeguarded.<sup>9</sup>*

One is tempted to posit this “explanation” of the detainee abuses committed by U.S. military personnel as an excuse for such behavior. In reality, there is no excuse. The Schlesinger statement’s reference to “uncertainties in the field as to which techniques were authorized” serves to question both the intelligence and professionalism of those personnel in Iraq during the time that detainee abuse occurred. It also affords them far too much cover. After years of training regarding the treatment and interrogation of detainees—all categories of detainees—it is difficult to believe that what these professionals knew to be true could be vitiated in a matter of weeks due to a sudden onset of “uncertainty and confusion” when exposed to the clearly unlawful interrogation techniques imported from Guantanamo.

One might blame the existence of any such confusion on a failure of leadership or the lack of a sufficient number of well-trained detention and intelligence personnel, but blame cannot simply be placed on the absence of clearly applicable regulatory, doctrinal, and policy guidance—or on a lack of knowledge thereof. Any “confusion” that was said to exist at the time may well have been self-induced, formulated then as



Vice chief of naval operations informs press that Guantanamo facilities meet all standards of humane treatment and comply with Common Article 3 of Geneva Conventions, February 2009

DOD (R.D. Ward)



a matter of operational expediency and later as an excuse for the abusive actions taken.

So, in looking back at the tragedy of My Lai, what are the principal lessons to be drawn 40 years later from the detainee abuse committed by U.S. military personnel both at Guantanamo and Iraq? First, it is unacceptable to blame the breakdown in discipline that led to such abuse solely on ill-advised and faulty decisionmaking in Washington. Political appointees did not push the military from that pedestal of law of war compliance; certain personnel appeared all too willing to jump. Second, our law of war training program obviously is not as effective as we envisioned it—and probably never has been. In the years since its inception, it now appears to have suffered incrementally from benign neglect and a false sense on our part that we had mastered this subject. Obviously, we have not. We must constantly work to make law of war training more effective. And finally, with a nod to the ethicists, a certain truth is that military leaders—at all levels—must have the courage to speak out when they perceive a policy initiative to be not only ill advised but unlawful, even when confronted with a legal opinion that appears to sanction the conduct at issue. In the case

of detainee abuse, some leaders did and some did not.

A U.S. return to respectability in terms of law of war compliance has begun. The military's dogged insistence that FM 2-22.3, *Human Intelligence Collector Operations* (September 2006), reflects the requirements of international law with regard to the interrogation methods that might be used by U.S. military personnel indicates this fact. The first executive orders issued by the Obama administration have evidenced a clear intent on the part of the United States to again comply with its international obligations in meeting the threat of terrorism. We may never again sit atop the pedestal; it has been a hard and public fall. But if we learn from our hubris, and profit from our collective experiences, we are sure to regain the respect of both the international community and the nation we serve. **JFQ**

#### NOTES

<sup>1</sup> Department of the Army, "Report of the Department of the Army Review of the Preliminary Investigation into the My Lai Incident" (Washington, DC: Department of the Army, March 14, 1970).

<sup>2</sup> Army Regulation (AR) 350-216, *Training: The Geneva Conventions of 1949 and Hague*

*Convention No. IV of 1907* (Washington, DC: U.S. Government Printing Office, May 28, 1970).

<sup>3</sup> The Hague Convention No. IV, October 18, 1907, Respecting the Laws and Customs of War on Land, T.S. 539, including the Regulations thereto; Hague Convention No. IX, October 18, 1907, Concerning Bombardment by Naval Forces in Time of War, 36 Stat. 2314; 1949 Geneva Conventions, August 12, 1949, 6 U.S.T. 3114, 3217, 3316, and 3516.

<sup>4</sup> DOD Directive 5100.77, "DOD Program for Implementation of the Law of War" (Washington, DC: U.S. Government Printing Office, November 5, 1974).

<sup>5</sup> Memorandum from President George W. Bush, "Humane Treatment of Al Qaeda and Taliban Detainees" (February 7, 2002).

<sup>6</sup> Memorandum from General James T. Hill, Commander, U.S. Southern Command, to General Richard B. Myers, Chairman, Joint Chiefs of Staff, "Counter-Resistance Techniques" (October 25, 2002).

<sup>7</sup> Memorandum from Jay S. Bybee, Assistant Attorney General, Department of Justice, to Alberto R. Gonzales, Counsel to the President, "Re: Standards of Conduct for Interrogation under 18 U.S.C. Sections 2340-2340A" (August 1, 2002).

<sup>8</sup> Ibid.

<sup>9</sup> Independent Panel to Review Department of Defense Detention Operations, Final Report (Washington, DC: August 24, 2004), 14.



Former Defense Secretary Donald Rumsfeld poses for pictures during tour of Abu Ghraib Detention Center, May 2004

# Lawfare: A Decisive Element of 21<sup>st</sup>-Century Conflicts?

By CHARLES J. DUNLAP, JR.

If anyone doubts the role of law in 21<sup>st</sup>-century conflicts, one need only pose the following question: what was the U.S. military's most serious setback since 9/11? Few knowledgeable experts would say anything other than the detainee abuse scandal known as "Abu Ghraib." That this strategic military disaster did not involve force of arms, but rather centered on illegalities, indicates how law has evolved to become a decisive element—and sometimes *the* decisive element—of contemporary conflicts.

It is not hard to understand why. Senior commanders readily characterized Abu Ghraib in customary military terms as "clearly a defeat" because its *effect* is indistinguishable from that imposed by traditional military clashes. No one debates that the revelations energized the insurgency and profoundly undermined the ability

of U.S. forces to accomplish their mission. The exploitation of the incident by adversaries allowed it to become the perfect effects-based, asymmetrical operation that continues to present difficulties for American forces. In early 2009, for instance, a senior Iraqi official conceded that the name "Abu Ghraib" still left a "bitter feeling inside Iraqis' heart."<sup>1</sup>

For international lawyers and others involved in national security matters, the transformational role of law is often captured under the aegis of the term *lawfare*. In fact, few concepts have risen more quickly to prominence than lawfare. As recently as 2001, there were only a handful of recorded uses of the term, and none were in today's context. By 2009, however, an Internet search produces nearly 60,000 hits. Unfortunately, lawfare has also generated its share of controversy.

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Taliban and al Qaeda use lawfare tactics by manipulating unintended civilian casualties from airstrikes



U.S. Air Force (Larry E. Reid, Jr.)

## Law in Warfare

To the best of my knowledge, lawfare as used in today's context first appeared in my 2001 essay for Harvard University's Carr Center.<sup>2</sup> At that time, the term was defined to mean "the use of law as a weapon of war" and, more specifically, to describe "a method of warfare where law is used as a means of realizing a military objective." Today, the most refined definition is "the strategy of using—or misusing—law as a substitute for traditional military means to achieve an operational objective."<sup>3</sup>

The purpose of the lawfare conceptualization in the national security context is to provide a vehicle that resonates readily with nonlegal audiences, particularly in the Armed Forces. Historically, the role of law in armed conflict was variously presented, but often simply as yet another requirement, one to which adherence was a matter of integrity and moral rectitude. As powerful as such values may be as incentives, especially to the militaries of liberal democracies, conceiving of the role of law in more conventional military terms has its advantages. Understanding that the law can be wielded much like a weapon by either side in a belligerency is something to which a military member can relate. It facilitates accounting for law, and particularly the fact and perception of adherence to it, in the planning and conduct of operations.

While recognizing the ever-present ethical responsibility to comply with the law, how does transforming adherence to law into a strategy serve the purposes of the warfighter? The answer is found in the work of Carl von Clausewitz. A man of his times, Clausewitz had little regard for international law as a factor in war.<sup>4</sup> Nevertheless, he was keenly aware of the political dimension, and this is the linkage to today's understanding of lawfare.

Clausewitz's famous dictum that war is a "continuation of political intercourse, carried on with other means" relates directly to the theoretical basis of lawfare.<sup>5</sup> Moreover, his analysis of the "trinity" of the people, government, and military whose "balance" produces success in war is likewise instructive. Specifically, in modern democracies especially, maintaining the balance that "political intercourse" requires depends largely upon adherence to law in fact and, importantly, *perception*.

Legal experts Michael Reisman and Chris Antoniou put it this way:

*In modern popular democracies, even a limited armed conflict requires a substantial base of public support. That support can erode or even reverse itself rapidly, no matter how worthy the political objective, if people believe that the war is being conducted in an unfair, inhumane, or iniquitous way.*<sup>6</sup>

Some adversaries see opportunity in this aspect of our political culture. Professor William Eckhardt observes:

*Knowing that our society so respects the rule of law that it demands compliance with it, our enemies carefully attack our military plans as illegal and immoral and our execution of those plans as contrary to the law of war. Our vulnerability here is what philosopher of war Carl von Clausewitz would term our "center of gravity."*<sup>7</sup>

In short, by anchoring lawfare in Clausewitzian logic, military personnel—and especially commanders of the militaries of democracies—are able to recognize and internalize the importance of adherence to the rule of law as a *practical* and necessary element of mission accomplishment. They need not particularly embrace its philosophical, ethical, or moral foundations; they can be Machiavellian in their attitude toward law because adherence to it serves wholly *pragmatic* needs. Thus,

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*Clausewitz was keenly aware of war's political dimension, and this is the linkage to today's understanding of lawfare*

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the concept of lawfare aims to insinuate law into military thinking in a new way, one that rationalizes it in terms compatible with the realities of 21<sup>st</sup>-century operations.

### Legal "Weaponry"

The new emphasis on law in war derives from the larger, worldwide legal revolution. George Will recently characterized the United States as the "Litigation Nation" to describe how deeply legal consciousness has penetrated American society.<sup>8</sup> Furthermore, international commerce depends upon law, along with a variety of international forums, to operate efficiently. This, in turn, is accelerating a globalization of law. As international law generally penetrates modern life, it tends to influence, as other trends have, the way war is conducted. Add to that the enormous impact of informa-

tion mediums, from round-the-clock news sources to cell phone cameras that empower almost anyone to record events, and it is easy to understand why incidents that seemingly implicate the international law of war can rapidly have significant ramifications among the body politic.

Commanders today, keenly aware of the devastating impact on operations that incidents such as Abu Ghraib can have, typically are willing partners in efforts to ensure that compliance with the law is part and parcel of their activities. It is no surprise, for example, that the much-heralded counterinsurgency manual devotes a considerable amount of text to law and law-related considerations.<sup>9</sup> Counterinsurgency and other contemporary "irregular warfare" situations are especially sensitive to illegalities that can undermine the efforts to legitimize the government (and those wishing to assist it) that the insurgency is aiming to topple.

The new counterinsurgency doctrine also emphasizes that lawfare is more than just something adversaries seek to use against law-abiding societies; it is a resource that democratic militaries can—and should—employ *affirmatively*. For example, the reestablishment of the rule of law is a well-understood component of counterinsurgency and has proven an important part of the success U.S. forces have enjoyed in Iraq.<sup>10</sup>

There are other examples of how legal instruments can substitute for military means and function as an affirmative good. To illustrate: during the early stages of operations in Afghanistan, a legal "weapon"—a contract—was used to deny potentially valuable military information (derived from commercially available satellite imagery) from hostile forces.<sup>11</sup> In addition, although strategists argue that 21<sup>st</sup>-century threats emerge most frequently from nonstate actors who often operate outside of the law, these actors are still vulnerable to its application. Legal "weaponry," for instance, may well be the most effective means of attacking the financial networks terrorist organizations require to function. Likewise, sanctions and other legal methodologies can isolate insurgencies from the external support many experts believe is essential to victory.



### A Tool for the Enemy?

While the employment of legal methodologies can create offensive opportunities for savvy U.S. commanders, too frequently our opponents use an exploitative form of lawfare along the lines of that arising in Abu Ghraib's aftermath. In fact, lawfare has emerged as the principal effects-based air defense methodology employed by America's adversaries today. Nowhere is this truer than in Afghanistan, where the Taliban and al Qaeda are proving themselves sophisticated and effective lawfare practitioners.

Specifically, the Taliban and al Qaeda are attempting to demonize the air weapon through the manipulation of the unintended civilian casualties airstrikes can produce. Their reason is obvious: precision air attacks are the most potent weapon they face. In June 2008, the *Washington Times* reported a Taliban fighter's lament that "tanks and armor are not a big deal. The fighters are the killers. I can handle everything but the jet fighters."<sup>12</sup> More recently, *Newsweek* told of a Taliban commander who, visiting the site of an attack by a Predator drone, marveled at how a "direct hit" was scored on the exact room an al Qaeda operative was using, leading the publication to conclude that a "barrage of pinpoint strikes may be unsettling al Qaeda."<sup>13</sup>

Yet the enemy is fighting back by mounting a massive—and increasingly effective—lawfare campaign. Using the media, they seek to create the perception, especially

among Afghans, that the war is being waged in an "unfair, inhumane, or iniquitous way."<sup>14</sup> Unfortunately, some well-intended efforts at countering the adversary's lawfare blitz are proving counterproductive. For example, in June 2007, a North Atlantic Treaty Organization (NATO) spokesman in Afghanistan insisted that the Alliance "would not fire on positions if it knew there were civilians nearby."<sup>15</sup> A little more than a year later, another NATO spokesman went even further, stating that if "there is the likelihood of even one civilian casualty, we will not strike, not even if we think Osama bin Laden is down there."<sup>16</sup> The law of war certainly does not

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*lawfare has emerged as the principal effects-based air defense methodology employed by America's adversaries*

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require zero civilian casualties; rather, it only requires that they not be excessive in relation to the military advantage sought.

Regardless, NATO's pronouncements unintentionally telegraphed an opportunity for lawfare-based strategy by which the enemy could avoid (or manipulate) airstrikes. That strategy is in effect today as evidenced by a November 2008 report wherein U.S. officers advised that the Taliban is "delib-

erately increasing the risk to civilians" by locating themselves among them.<sup>17</sup> In terms of manipulation, consider an incident in which the Taliban, according to an American official, held a wedding party hostage as they fired on U.S. forces in an "attack designed to draw airstrikes on civilians and stoke anti-American sentiment."<sup>18</sup>

What is frustrating is the fact that revolutionary advances in aerial surveillance technologies and precision munitions have made airstrikes, in the words of Marc Garlasco of Human Rights Watch, "probably the most discriminating weapon that exists."<sup>19</sup> The problem concerns perceptions. Accordingly, Jaap de Hoop Scheffer, the Secretary-General of NATO, correctly recognizes that perceptions are a "strategic battleground" and wants to "prioritize strategic communications" to remind the world "that the Taliban remain the ruthless killers and abusers of human rights that they have always been."<sup>20</sup>

The Taliban is not the only adversary employing abusive lawfare tactics. In their air and ground operations in Gaza in late 2008 and early 2009, the Israelis faced a foe who, according to Israeli officials, flouted international law in an unprecedented manner. Specifically, the *New York Times* reported:

*Hamas rocket and weapons caches, including rocket launchers, have been discovered in and under mosques, schools and civilian homes, the [Israeli] army says. The Israeli intelligence chief, Yuval Diskin, in a report to the Israeli cabinet, said that the Gaza-based leadership of Hamas was in underground housing beneath the No. 2 building of Shifa Hospital, the largest in Gaza.*<sup>21</sup>

It appears that based on its experiences in the 2006 Lebanon War, the Israelis made careful and innovative counter-lawfare preparations for the Gaza operation. Besides using "meticulous technical and human intelligence" to validate targets—as well as employing low collateral damage munitions in strikes—the Israelis also subjected plans to review by military lawyers "huddling in war rooms."<sup>22</sup> In addition, Israel "distributed hundreds of thousands of leaflets and used its intelligence on cell phone networks in Gaza to issue warnings to civilians, including phone calls to some families in high-risk areas."<sup>23</sup>

Perhaps of most interest is the implementation of a concept called "operational verification."<sup>24</sup> According to *Defense News*, almost every Israeli army unit has specially



Courtroom sketch of Khalid Sheikh Mohammed and four other alleged September 11 co-conspirators

JTF Guantanamo (Nat Moger)

trained teams equipped with video cameras, tape recorders, and other documentation gear. The aim is to “document the story in real time” while there is still a “chance to influence public opinion” about the conduct of the operation.

Anthony Cordesman argues that although he believes that Israel did not violate the law of war and made a “systematic effort to limit collateral damage,” there was nevertheless “almost constant negative coverage of Israel in the Arab and Islamic world, as well as in much of Europe,” despite Israel’s efforts.<sup>25</sup> Consequently, as *Der Spiegel* reported, Israeli officials are “gearing up for a wave of lawsuits from around the world” claiming violations of the law of war.<sup>26</sup> Other news agencies report that the Israeli government is vowing to defend its soldiers against legal attack. Interestingly, *Der Spiegel* characterized the expected legal action in what are in effect lawfare terms in paraphrased Clausewitzian language as a “continuation of the war with legal means.”<sup>27</sup>

### Operationalizing Law

What does all this mean for commanders in 21<sup>st</sup>-century conflicts? In the first place, it is imperative that warfighters reject interpretations of lawfare that cast the law as a villain. A better, more realistic assessment is set forth by attorney Nathaniel Burney:

*[Lawfare] is often misused by those who claim that there is too much law, and that the application of law to military matters is a bad thing that hamstring commanders in the field. The fact of the matter is that lawfare is out there; it happens. It is not inherently good or bad. . . . It might be wiser for such critics to take it into account, and use it effectively themselves, rather than wish it didn't exist.*<sup>28</sup>

Besides the fact that law may sometimes offer ways of bloodlessly achieving operational objectives, it is simply historically untrue that totalitarians who operate outside of humanitarian norms that the law reflects are more likely to succeed. Scholar Victor Davis Hanson points out that the basis for the enormous success of Western militaries is their adherence to constitutional government and respect for individual freedoms, and constant external audit and oversight of their strategy and tactics.<sup>29</sup> Historian Caleb Carr goes a step further by insisting that the “strategy of terror” of waging war against civilians nearly always has proven to

be a “spectacular” failure.<sup>30</sup> In short, adherence to the rule of law does not present the military disadvantage so many assume.

Next, the commander must be concerned with “legal preparation of the battlespace.” This means that command must ensure that troops have been properly trained to understand the law applicable to the operation and are ready to apply it under extreme stress. In this regard, the 2007 Department of Defense study of Soldiers and Marines

conclusion is a September 2008 report by Human Rights Watch that found that civilian casualties “rarely occur during planned airstrikes on suspected Taliban targets” but rather “almost always occurred during the fluid, rapid-response strikes, often carried out in support of ground troops.”<sup>34</sup> Thus, small-footprint operations can limit the risk to civilians, as well as limit the adversary’s opportunity for lawfare-exploitable events with strategic consequences.

*almost every Israeli army unit has specially trained teams equipped with video cameras, tape recorders, and other documentation gear*

in Iraq is troubling as it revealed that only “47 percent of the soldiers and 38 percent of Marines agreed that non-combatants should be treated with dignity and respect, and that well over a third of all soldiers and Marines reported that torture should be allowed to save the life of a fellow soldier or Marine.”<sup>31</sup>

Although intensive training and strong leadership may mitigate such attitudes, experts doubt such efforts can wholly prevent incidents from occurring.<sup>32</sup> Furthermore, Stephen Ambrose observed that it is a “universal aspect of war” that when young troops are put “in a foreign country with weapons in their hands, sometimes terrible things happen that you wish had never happened.”<sup>33</sup>

This could suggest that the best way to avoid incidents is to limit the number of troops on the ground. Supporting this con-

Legal preparation of the battlespace also requires robust efforts to educate the media as to what the law does—and does not—require. Adversaries today are clever in their relations with the global media, and U.S. forces must be able to respond as quickly (and ideally before inquiries are made) and transparently as possible to lawfare-related incidents. Relationships with the media must be built in advance; once an incident occurs, it is difficult to explain legal complexities or to demonstrate the efforts to avoid unnecessary civilian losses on a timeline that will be meaningful.

Commanders would be wise to emulate the Israeli initiative by establishing “operational verification” teams to record activity in real time in instances where the adversary is employing an effects-based lawfare strategy centered around allegations of war crimes. In any event,

Marine combat photographer videotapes Marines conducting searches of Iraqi males



II MEF Combat Camera (Paul D. Bishop)



multidisciplinary teams of legal, operational, intelligence, and public affairs specialists ought to be organized, trained, and equipped to rapidly investigate allegations of incidents of high collateral damage. Likewise, command and control systems ought to be evaluated for their ability to record data for the purpose of accurately reconstructing processes if required.

“Operational verification” teams could be more than simply sophisticated elements of an information operations effort. Properly organized, trained, and equipped, they can fulfill legitimate public diplomacy needs, but they can also provide near-real-time feedback to commanders as to how operations are being executed. Thus, commanders could rapidly adapt procedures if the empirical data gathered by such teams indicate opportunities to better protect innocents.

Of course, the availability of expert legal advice is absolutely necessary in the age of lawfare. The military lawyers (judge advocates) responsible for providing advice for combat operations need schooling not only in the law, but also in the characteristics of the weapons to be used, as well as the strategies for their employment. Importantly, commanders must make it unequivocally clear to their forces that they intend to conduct operations in strict adherence to the law. Helping commanders do so is the job of the judge advocate.

Assuring troops of the legal and moral validity of their actions adds to combat power. In discussing the role of judge advocates, Richard Schragger points out:

*Instead of seeing law as a barrier to the exercise of the client's power, [military lawyers] under-*

*stand the law as a prerequisite to the meaningful exercise of power. . . . Law makes just wars possible by creating a well-defined legal space within which individual soldiers can act without resorting to their own personal moral codes.<sup>35</sup>*

That said, commanders should aim not to have a judge advocate at the elbow of every rifleman, but rather to imbue troops with the right behaviors so they instinctively do the right thing on the battlefield. The most effective way is to carefully explain the enemy's lawfare strategies and highlight the pragmatic, real-world impact of Abu Ghraib-type incidents on the overall success of the mission. One of the most powerful motivators of troop conduct is the desire

*commanders must make it unequivocally clear to their forces that they intend to conduct operations in strict adherence to the law*

to enhance the security of fellow soldiers. Making the connection between adherence to law and troop safety is a critical leadership task.

Integral to defensive lawfare operations is the education of the host nation population and, in effect, the enemy themselves. In many 21<sup>st</sup>-century battlespaces, these audiences are not receptive to what may appear as law imposed by the West. In 1999, for example, a Chinese colonel famously argued that China was “a weak country, so do we need to fight

according to your rules? No. War has rules, but those rules are set by the West. . . . [I]f you use those rules, then weak countries have no chance.”<sup>36</sup>

To counter such beliefs, it is an essential lawfare technique to look for touchstones within the culture of the target audience. For example, in the early 1990s, the International Committee of the Red Cross produced an illustrated paperback that matched key provisions of the Geneva Convention “with bits of traditional Arab and Islamic wisdom.”<sup>37</sup> Such innovations ought to be reexamined, along with creative ideas that would get the messages to the target audience. One way might be to provide audio cassettes in local languages that espouse what are really Geneva Convention values in a context and manner that fit with community religious and cultural imperatives.

The point is to delegitimize the enemy in the eyes of the host nation populace. This is most effectively accomplished when respected indigenous authorities lead the effort. Consider Thomas Friedman's favorable assessment of the condemnation by Indian Muslim leaders of the November 2008 Mumbai attacks:

*The only effective way to stop [terrorism] is for “the village”—the Muslim community itself—to say “no more.” When a culture and a faith community delegitimize this kind of behavior, openly, loudly and consistently, it is more important than metal detectors or extra police.<sup>38</sup>*

Moreover, it should not be forgotten that much of the success in suppressing violence in Iraq was achieved when Sunnis in Anbar Province and other areas realized that al Qaeda operatives were acting contrary to Iraqi, and indeed Islamic, sensibilities, values, and law. It also may be possible to use educational techniques to change the attitudes of enemy fighters as well.

Finally, some critics believe that “lawfare” is a code to condemn anyone who attempts to use the courts to resolve national security issues. For example, lawyer-turned-journalist Scott Horton charged in the July 2007 issue of *Harper's Magazine* that “lawfare theorists” reason that lawyers who present war-related claims in court “might as well be terrorists themselves.”<sup>39</sup> Though there are those who object to the way the courts have been used by some litigants,<sup>40</sup> it is legally and morally wrong to paint anyone legitimately using legal processes as the “enemy.”

BG Michael A. Ryan, U.S. Forces Afghanistan, offers condolences to families of those killed during an operation targeting insurgents, February 2009



U.S. Army (John Gray)



Indeed, the courageous use of the courts on behalf of unpopular clients, along with the insistence that even our vilest enemies must be afforded due process of law, is a deeply embedded American value, and the kind of principle the Armed Forces exist to preserve. To be clear, recourse to the courts and other legal processes is to be encouraged; if there are abuses, the courts are well equipped to deal with them. It is always better to wage legal battles, however vicious, than it is to fight battles with the lives of young Americans.

Lawfare has become such an indelible feature of 21<sup>st</sup>-century conflicts that commanders dismiss it at their peril. Key leaders recognize this evolution. General James Jones, USMC (Ret.), the Nation's new National Security Advisor, observed several years ago that the nature of war has changed. "It's become very legalistic and very complex," he said, adding that now "you have to have a lawyer or a dozen."<sup>41</sup> Lawfare, of course, is about more than lawyers; it is about the rule of law and its relation to war.

While it is true, as Professor Eckhardt maintains, that adherence to the rule of law is a "center of gravity" for democratic societies such as ours—and certainly there are those who will try to turn that virtue into a vulnerability—we still can never forget that it is also a vital source of our great strength as a nation.<sup>42</sup> We can—and must—meet the challenge of lawfare as effectively and aggressively as we have met every other issue critical to our national security. **JFQ**

## NOTES

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<sup>2</sup> Charles J. Dunlap, Jr., *Law and Military Interventions: Preserving Humanitarian Values in 21<sup>st</sup> Century Conflicts*, Working Paper (Boston: Harvard Kennedy School, 2001), available at <www.ksg.harvard.edu/cchrp/Web%20Working%20Papers/Use%20of%20Force/Dunlap2001.pdf>.

<sup>3</sup> Charles J. Dunlap, Jr., "Lawfare Today," *Yale Journal of International Affairs* (Winter 2008), 146, available at <www.nimj.org/documents/Lawfare%20Today.pdf>.

<sup>4</sup> Carl von Clausewitz, *On War*, ed. and trans. Michael Howard and Peter Paret (Princeton: Princeton University Press, 1989).

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<sup>6</sup> W. Michael Reisman and Chris T. Antoniou, *The Laws of War: A Comprehensive Collection of Primary Documents on International Laws Governing Armed Conflict* (New York: Vintage Books, 1994), xxiv. Emphasis added.

<sup>7</sup> William George Eckhardt, "Lawyering for Uncle Sam When He Draws His Sword," *Chicago Journal of International Law* 431 (2003), 4.

<sup>8</sup> George F. Will, "Litigation Nation," *The Washington Post*, January 11, 2009, B7.

<sup>9</sup> Field Manual 3–24, *Counterinsurgency* (Washington, DC: Headquarters Department of the Army, December 15, 2006).

<sup>10</sup> Michael Gordon, "In Baghdad, Justice Behind the Barricades," *The New York Times*, July 20, 2007, available at <www.nytimes.com/2007/07/30/world/middleeast/30military.html?ref=world>.

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<sup>15</sup> "U.S. Coalition Airstrikes Kill, Wound Civilians in Southern Afghanistan, Official Says," *International Herald Tribune*, June 30, 2007, available at <www.iht.com/articles/ap/2007/06/30/asia/AS-GEN-Afghan-Violence.php>.

<sup>16</sup> Pamela Constable, "NATO Hopes to Undercut Taliban with Surge of Projects," *The Washington Post*, September 27, 2008, A12.

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<sup>25</sup> Cordesman, ii.

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<sup>28</sup> Nathaniel Burney, *International Law* (2007), available at <www.burneylawfirm.com/international\_law\_primer.htm#lawfare>.

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<sup>31</sup> Department of Defense, "DOD News Briefing with Assistant Secretary Casscells from the Pentagon," May 4, 2007, available at <www.defenselink.mil/transcripts/transcript.aspx?transcriptid=3958>.

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<sup>34</sup> Human Rights Watch, "'Troops in Contact' Airstrikes and Civilian Deaths in Afghanistan," September 2008, 4, available at <http://hrw.org/reports/2008/afghanistan0908/afghanistan0908web.pdf>. Emphasis added.

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<sup>38</sup> Thomas L. Friedman, "No Way, No How, Not Here," *The New York Times*, February 17, 2009, available at <www.nytimes.com/2009/02/18/opinion/18friedman.html>.

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<sup>42</sup> Eckhardt.

[N]ever in the history of the United States had lawyers had such extraordinary influence over war policy as they did after 9/11.<sup>1</sup>

*The role of the judge advocate is to provide commanders with the best and most complete legal inputs possible, free from both self-promotion (careerism) and the fear of the reaction of command to advice that may at times be unpopular, restrictive, or, in extreme cases, prohibitive.<sup>2</sup>*



Detainees relax in exercise yard in communal living facility, Guantanamo Bay Detention Facility

# The Detainee Interrogation Debate and the Legal-Policy Process

By LISA L. TURNER

Near the start of Donald Rumsfeld's service as Secretary of Defense in the first term of President George W. Bush, he asked why there were so many lawyers in the Pentagon. He apparently believed the number of military and civilian lawyers could be streamlined or consolidated. Meanwhile, national security practitioners expressed increasing concern about *lawfare*—the strategy of using or misusing law and legal processes as a substitute for traditional instruments of power to achieve either strategic or operational effects. Detainee treatment was a principal area of disagreement between the most senior administration civilian lawyers and The Judge Advocates General (TJAGs), the most senior military lawyers in each Service. Despite Secretary Rumsfeld's remarks, Department of Defense (DOD) lawyers increased in number during his tenure, the administration suffered repeated strategic legal attacks related to

detainee treatment, and Congress legislated independence of military lawyers (judge advocates, or JAGs) from civilian DOD attorneys. Recently, the Convening Authority for the Military Commissions declined to prosecute at least one detainee, finding that the application of some of the Secretary of Defense–authorized techniques was “torture.”<sup>3</sup>

Detainee interrogation policy provides a case study into deviations from the national security legal-policy-making process. After identifying key administration lawyers and TJAG roles in legal-policy formation, this article explores legal ethical requirements to serve as advisor during policy development. It briefly examines civil-military relations issues relevant to the legal-policy process and concludes with discussion of legal-policy formation abnormalities during the detainee interrogation debate. The case study can inform process decisions during future national security debates.

## Legal Structure and Process

Many newcomers to DOD are surprised to find what appear competing and overlapping Pentagon legal establishments. Most soon understand that TJAGs, Military Department General Counsel (GC), and DOD General Counsel (DOD/GC) generally serve complementary and necessary roles. Each has an important function in the legal-policy process.

The Army TJAG position was created on July 29, 1775. Most GC positions and the DOD/GC position were statutorily created after World War II. DOD does not have a TJAG. A legal team has served the Chairman of the Joint Chiefs of Staff (CJCS) since General Omar Bradley appointed a lawyer to his staff in

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1949. The Office of the Chairman of the Joint Chiefs of Staff Legal Counsel (OCJCS/LC) is a JAG. CJCS does not have a GC.

DOD/GC is statutorily the DOD “chief legal officer” (CLO). Department regulation assigns primacy to the DOD/GC opinions when there is a conflict with another DOD attorney. Statute does not define *chief legal officer*, but congressional actions since 1992 clarify that the designation does not include executive authority over or supervisory control of TJAGs, Judge Advocate General’s Corps (JAG Corps), or OCJCS/LC. DOD/GC does not exercise “control” over the JAGs in terms of civilian control of the military. GCs and TJAGs assist DOD and Military Department civilian leadership exercise control of the military. Together, they support the constitutional framework that assigns responsibilities to both the President and Congress.

GCs are political appointees with significant political experience and connections but no military experience requirement. William J. Haynes II, the DOD/GC during the detainee debates, was an honors clerk captain on the Army GC staff (1984–1989), then the Army GC (1990–1993). He returned to the Pentagon in 2001 as DOD/GC. Haynes had a longstanding, close relationship with David Addington, a former DOD/GC, counsel to Vice President Richard Cheney and later his chief of staff. Addington and Haynes worked for then–Secretary of Defense Cheney. By contrast, the Air Force GC, Mary Walker, was new to the Pentagon but apparently had political connections to the administration.

TJAGs are general and flag officers who have served for decades in uniform as judge advocates at many levels of command. Most have Master of Laws degrees or have attended in-residence senior professional military education long programs. When identifying the roles of key national security lawyers, a former National Security Council attorney explained: “The judge advocates general of the military services, for example, are central players in the development of military law and legal-policy as well as the application of the law of armed conflict.”<sup>4</sup> TJAGs involved in the detainee discussions spent their early careers working to mitigate the harm done to the Armed Forces as a result of Vietnam-era “perceived law of war violations.”<sup>5</sup> They helped rebuild military credibility, morale, and professionalism. As Servicemembers, they are subject to and protected by military justice rules and the Geneva Conventions.

Congress has long recognized the need of commanders and policymakers to receive both civilian GC and independent military legal advice. While reorganizing and streamlining DOD in 1986, Congress expressly considered but rejected combining the GCs and JAG Corps.<sup>6</sup> In the early 1990s, while Cheney was Secretary of Defense and Haynes the Army GC, and during Addington’s nomination process to be DOD/GC, Congress halted executive branch consolidation of legal services under GCs.<sup>7</sup> During the detainee debate, the executive branch again attempted to subordinate TJAGs to Military Department GCs and to transfer JAG Corps manpower to GC offices. As a direct result, Congress enacted statutory changes to prevent any “officer or employee of the Department of Defense [from interfering] with the ability of the Judge Advocate General to give independent legal advice to” their respective Service secretary or chief of staff; or “the ability of officers of the [Service] who are designated as judge advocates who are assigned or attached to, or performing duty with, military units to give independent legal advice to commanders.”<sup>8</sup> Similarly, Chairmen of the Joint Chiefs of Staff have resisted recent attempts to bring OCJCS/LC under the control and direction of DOD/GC or to exclude OCJCS/LC from key meetings.<sup>9</sup> Congress emphasized the value of independent military legal advice for CJCS through recent legislation.<sup>10</sup>

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*The Judge Advocates General are general and flag officers who have served for decades in uniform as judge advocates at many levels of command*

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Even when tensions exist between a GC and TJAG, staffs productively cooperate and have strong relationships. Many GC staff were or are JAGs (for example, retired and/or Reserve Component). Significant issues are staffed up to TJAGs and GCs who advise decisionmakers. Occasionally, Service legal reviews are forwarded to DOD/GC for guidance. Operational issues typically come up from combatant command legal offices to OCJCS/LC, which often works the issues with DOD/GC. For some legal issues, combatant command JAGs coordinate directly with DOD/GC. OCJCS/LC coordinates many issues with the Services.

Typically, GCs and TJAGs agree on legal-policy issues. Disagreements usually reflect the different perspectives the lawyers bring with their roles rather than differences in legal opinions. Traditionally, the legal-policy-making process brings out these complementary perspectives. Most policymakers want to know about GC/TJAG differences to inform decisionmaking.<sup>11</sup>

Some have questioned the TJAG role in the detainee interrogation debate, given that the operational chain raised the issue (combatant command to CJCS). The answer partially lies in unique TJAG statutory responsibilities. TJAGs are statutorily charged with overseeing appointment of a lawyer as a judge advocate and with “direct[ing] the officers of [their Service] designated as judge advocates in the performance of their duties.”<sup>12</sup> Additionally, “the staff judge advocate or legal officer of any command is entitled to communicate directly with the staff judge advocate or legal officer of a superior or subordinate command, or with the Judge Advocate General.”<sup>13</sup> While most judge advocates serve in a commander’s chain, TJAGs exercise professional legal supervision over all in their respective JAG Corps.

TJAGs also have unique statutory operational and military justice roles. They are the primary legal advisor to their Service chiefs in the latter’s roles as Joint Chiefs. They supervise the administration of military justice and have statutory responsibilities related to military commissions.<sup>14</sup> Activities that could result in prosecution of military interrogators and plans to try detainees in military commissions are squarely in the TJAG purview.

OCJCS/LC also consults with TJAGs in their Service capacity. TJAG Service equities on detainee issues are significant. For example, they perform legal reviews on regulations such as then-governing Army Field Manual (FM) 34–52, *Intelligence Interrogation*. They oversee training of Servicemembers and others on a range of directly relevant issues.

On behalf of the Attorney General, the Office of Legal Counsel (OLC) issues legal advice on which the President and heads of executive departments rely in forming, executing, and supporting policy decisions.<sup>15</sup> The OLC was heavily involved in detainee interrogation issues. Many former OLC lawyers are among the most well known in the United States. Few, if any, have military experience. DOD/GC, as a matter of practice, requests legal opinions from the OLC on a range of matters. Federal regulation assigns the OLC the



responsibility of “advising with respect to the legal aspects of treaties and other international agreements.”<sup>16</sup> History and regulation ascribe OLC opinions the weight of binding legal authority over the executive branch unless overruled by the courts, Attorney General, or the President.

### Legal Roles and Responsibilities

Lawyers have a variety of professional ethical roles and responsibilities. Although not uniformly described, they generally fall within the following categories: advisor, advocate, negotiator, intermediary, and evaluator. Lawyers can craft plausible legal-policy arguments to support most desired endstates. Proper context is the key to the advocate role. This valuable skill is appropriate after a policy decision has been made and the lawyer is using his legal skills to support that decision.

Better policy is developed when a lawyer serves as a balanced advisor. Commanders and policymakers generally expect their lawyers to answer four questions on any proposed action:

- Is it legal?
- Is it advisable?
- If it is not legal or if it is ill advised, what are the alternatives?
- What is the recommended course of action?

The legal advisor should discern the desired endstate, provide right and left boundaries established by law, and ensure he does not present his opinion on policy as legal fact. Instead, his goal is to enable the decisionmaker to consider the strengths, weaknesses, and legal consequences of a proposed course of action in order to make a well-reasoned and deliberative decision. Similarly, when an operations planner is supporting a commander’s mission statement, the planner provides the commander with various proposed courses of action, identifies pros and cons of each, and recommends a way ahead.

Codes of professional conduct establish legal professional ethics standards. TJAGs issue JAG Corps rules.<sup>17</sup> Failure to comply with Service credentialing and ethics rules may result in disciplinary or administrative action, to include court-martial. Ethics rules require lawyers to provide their client with “candid advice” based on their “independent professional judgment.”<sup>18</sup> The Services teach that “candid”—means ‘not holding back.’ It means being ‘frank’; free from prejudice or bias; fair;

impartial; free from guile; straightforward; very honest. It means judge advocates are not to be ‘Yes Men and Women.’”<sup>19</sup> In 2001, a JAG later involved in the detainee debates as TJAG wrote: “The [judge advocate] must effectively explain the rules, provide the right advice always, and preclude problems by telling commanders what they need to know—even when it’s difficult.”<sup>20</sup> Civilian commentators concur that lawyers are obligated “to provide the client with straightforward advice, regardless of how unpleasant that advice may be.”<sup>21</sup>

Leaders expect judge advocates to discuss nonlegal factors along with technical legal advice.<sup>22</sup> Narrowly focused legal advice “may be of little value to a client,” particularly

### *the Office of Legal Counsel was heavily involved in detainee interrogation issues*

to senior leaders who have policy, political, and other practical considerations to weigh when making decisions.<sup>23</sup> Ethics rules instruct lawyers to “refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client’s situation.”<sup>24</sup> They are to “discuss the legal and moral consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.”<sup>25</sup> They are also to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”<sup>26</sup> Some jurisdictions mandate this broad-scope advice.<sup>27</sup>

Judge advocates have a longstanding reputation for candor. Senior leaders describe most judge advocates, in their advisory role, as the “red light on the commander’s desk,” the “honest broker” willing to “speak the truth to power,” and the “conscience of the Service.”<sup>28</sup> Most GCs recognize the importance of the JAG candid advisor role. The Honorable Jeh Johnson, a former Secretary of the Air Force GC and the new DOD/GC, recently reminded judge advocates, “You must live by one simple rule: you wear the uniform of a JAG to help policymakers and commanders shape the policy to fit the law, not to shape the law to fit the policy.”<sup>29</sup>

OLC lawyers also have a long tradition of serving as forthright advisors. The Attorney General statute uses the word *advise* in

describing his role in relation to other executive branches. The advisory role is also in statute with respect to the OLC role on international legal issues. OLC opinions are sometimes called “quasi-judicial” because they set forth the final executive position on a matter of law when the courts have not spoken to the issue. Balanced opinions are critical because these opinions are seldom reviewed by the courts. Advocacy is seldom appropriate for an OLC opinion.<sup>30</sup>

Lawyers are also guided by their oath to the Constitution. Civilian control of the military is a key constitutional principle. As discussed, TJAGs are not under the “control” of GC or OLC. Another constitutional issue is the tension among the three branches of government. Most policymakers understand that officers have as much of a duty to the legislative branch as well as to the executive branch.<sup>31</sup> Samuel Huntington explained, “If Congress was to play its part in determining national military policy, it required the same independent professional advice which the President received.”<sup>32</sup> Reaffirming this obligation, prior to confirmation, Congress requires TJAGs and three- and four-star nominees to take an oath swearing to provide Congress their personal opinions on military matters when asked, even those opposing administration policy.

A third civil-military relations issue in the detainee debate is the degree to which civilians seek out military advice prior to making policy decisions. Some argue that civilians must consider military advice even though they do not have to adopt uniformed recommendations. The Constitution does not impose such a duty, but common sense and a long tradition of respect for the profession of arms usually lead civilian leaders to consult. The post-Vietnam military is sensitive to the duty to candidly advise civilian leaders. Similarly, policymakers may normally use their JAGs as often or as seldom as deemed appropriate. Some statutes or executive orders mandate TJAG review, but the detainee matters were not in that class of issues. Most policymakers value and desire judge advocate advice and build legal reviews into all manner of issue development.

### Detainee Interrogation Debate<sup>33</sup>

Beginning in late 2001, a small group of the most senior administration lawyers became extraordinarily influential on national security matters. The self-described “War Council” included then-White House Counsel Judge Alberto Gonzales, Addington, Haynes, and

John Yoo, then-OLC counsel. The group met privately every few weeks to:

*plot legal strategy in the war on terrorism, sometimes as a prelude to dealing with lawyers from the State Department, the National Security Council, and the Joint Chiefs of Staff who would ordinarily be involved in war-related interagency legal decisions, and sometimes to the exclusion of the interagency process altogether.*<sup>34</sup>

It is worth noting that Addington once stated, “Don’t bring the TJAGs into the process. They aren’t reliable.”<sup>35</sup> This group crafted the administration legal-policy positions on war and intelligence issues, among others. They dominated many national security discussions and were intimately involved in detainee issues.

In mid-September 2001, the first of many OLC memoranda was drafted to maximize the President’s legal authority and to minimize constraints on his freedom of action. Operation *Enduring Freedom* began in October. In December, Mohamed al-Kahtani, the “20<sup>th</sup> hijacker,” was detained. That month, the DOD/GC staff requested information on interrogations from the DOD agency that trains U.S. military personnel in survival, evasion, resistance, and escape (SERE) to resist interrogation techniques, including those illegal under the Geneva Conventions. A Senate inquiry later found this request “unusual” and unprecedented.<sup>36</sup> On December 28, OLC sent a memo to Haynes opining that there would be no U.S. habeas corpus jurisdiction for Guantanamo detainees. The first detainees, including al-Kahtani, arrived at Guantanamo on January 11, 2002.

On January 15, Haynes, Addington, Judge Gonzalez, Yoo, and others visited Guantanamo, toured the facility, and discussed detainee issues. A week earlier the U.S. Southern Command (USSOUTHCOM) staff judge advocate (SJA), with approval from the USSOUTHCOM commander but without coordination with Washington, DC, lawyers, invited the International Committee of the Red Cross (ICRC) to Guantanamo. Once they discovered the invitation, War Council lawyers expressed serious displeasure with it. ICRC representatives arrived at Guantanamo on January 17 to conduct activities. Also that month, War Council members debated the applicability of the Geneva Conventions to Guantanamo detainees with lawyers and decisionmakers from the State Department, National Security Council, and JCS.<sup>37</sup> On Feb-

ruary 7, the President determined that *Enduring Freedom* detainees were not entitled to Geneva Convention protections, but to a lesser, undefined standard of “humane treatment.”<sup>38</sup>

In February 2002, Major General (MG) Michael Dunlavey, USA, was selected to command Task Force 170 at Guantanamo.<sup>39</sup>

*senior leaders describe most judge advocates, in their advisory role, as the “red light on the commander’s desk,” the “honest broker” willing to “speak the truth to power”*

Secretary Rumsfeld instructed him to “maximize the intelligence production.” MG Dunlavey was told to report directly to the Secretary. When the issue of reporting up through the USSOUTHCOM chain was raised, Secretary Rumsfeld responded, “I don’t care who he is under. He works for me.”<sup>40</sup> MG Dunlavey thereafter had regular, direct contact with the Office of the Secretary of Defense (OSD).

a violation of the Federal law, detainee interrogations conducted outside of the United States would have to rise to the level of inflicting pain “associated with a sufficiently serious physical condition or injury such as death, organ failure, or serious impairment of body functions.”<sup>42</sup> The opinion built on prior OLC opinions and the Presidential Geneva Conventions finding. That same day, OLC issued a more specific

U.S. Air Force (Jim Verhegyn)



**Air Force General Counsel Mary L. Walker speaks during Pentagon press briefing**

MG Dunlavey arrived at Guantanamo in March 2002. By summer, al-Kahtani was recognized as a possible key information source. MG Dunlavey met with the Secretary and, separately, DOD/GC every month or two. Discussions between GC and the commander often focused on concern that the interrogations were not as effective as desired and that another approach was needed.<sup>41</sup> On July 25, the DOD/GC office received SERE documents

opinion approving Central Intelligence Agency (CIA) use of interrogation techniques, including some adapted from SERE training. The legal door for use of interrogation techniques far beyond any previously authorized for use by the U.S. military was now open. In isolation, al-Kahtani continued to resist standard techniques.

On September 26, 2002, Haynes, Addington, two OLC lawyers, the number two CIA

lawyer, and other Pentagon civilian lawyers flew to Guantanamo. They toured the detention facility, watched an interrogation, discussed potential new interrogation techniques, and met with MG Dunlavey and his lawyer, Lieutenant Colonel Diane Beaver, USA. On October 2, the chief lawyer for the CIA Counterterrorist Center went to Guantanamo and discussed aggressive interrogation techniques with the staff, to include LTC Beaver.

During late September and early October, MG Dunlavey's staff, with CIA and Defense Intelligence Agency operators, brainstormed nonstandard interrogation techniques they might apply. Under significant pressure to support the techniques, LTC Beaver and her team drafted a legal review. When her staff raised moral and policy concerns, she told them to address only domestic law. The JAGs did not have the OLC memos, but simply conducted their own legal research. In line with standard processes, LTC Beaver and her staff reasonably believed theirs was the first of what would be a long line of legal reviews.

On October 11, MG Dunlavey sent a memo and LTC Beaver's legal review to the USSOUTHCOM commander requesting approval to use new interrogation techniques. While the USSOUTHCOM legal review was pending, Haynes called the command's operational staff to advise that the request be approved and implemented as submitted. The officer declined to follow Haynes' instruc-

tions. The USSOUTHCOM SJA had several discussions with LTC Beaver in which the command expressed grave concerns with the joint task force (JTF) request. USSOUTHCOM and JCS lawyers then discussed serious concerns about the request. The USSOUTHCOM commander routed the request to General Richard Myers, USAF, then-CJCS, recommending "that the Department of Justice lawyers review the [four most controversial proposed] techniques." JAGs were still not aware of the OLC memos. On November 4, MG Geoffrey Miller assumed command from MG Dunlavey.

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*the President determined that Enduring Freedom detainees were not entitled to Geneva Convention protections*

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OCJCS/LC, then-Captain Jane Dalton, USN, initiated a legal and policy review that she believed the nature of the issues required. Given the various TJAG equities in the issue, she requested TJAGs' comment. During the first week of November 2002, TJAGs' staffs responded in writing to the JCS package with significant legal and policy concerns. They strongly recommended further detailed legal analysis of the proposal. DOD Associate Deputy Counsel for

International Affairs also advised DOD/GC that further review was needed.

After meeting with Haynes, General Myers instructed Captain Dalton to stop the broad review because "Haynes [did] not want this process to proceed." General Myers and Haynes expressed concern about leaks and speed of analysis. Although the stand-down was unprecedented, Captain Dalton believed that she was not prohibited from conducting her own legal analysis or review. She spoke with Haynes and General Myers about legal and policy concerns, but neither DOD/GC nor LC produced any written legal review or summary of the written TJAG concerns.

On November 23, an unidentified person in OSD telephoned MG Miller and stated that all requested techniques were approved. Beginning that day, Guantanamo interrogators began to use expanded techniques on al-Kahtani. On November 27, Haynes personally typed a short cover-type memo to the Secretary of Defense recommending approval of 15 of the 18 requested techniques.<sup>43</sup> Written legal review beyond LTC Beaver's and any mention of TJAG concerns were absent.

On December 2, Secretary Rumsfeld approved the expanded techniques but without any guidance on administration of the techniques.<sup>44</sup> TJAGs were unaware of the Secretary's approval until the Navy GC, Alberto Mora, learned about the matter through an operator associated with interrogations. The Navy GC notified the Navy TJAG, and then led a series of meetings where he and the Navy TJAG lodged objections with DOD/GC, the special assistant to the Secretary of Defense, and the Deputy Secretary. The other TJAGs attended at least one meeting with DOD/GC where they vigorously joined the objection. After Mora told Haynes that he would put his objections in writing, Secretary Rumsfeld suspended use of the expanded techniques and instructed DOD/GC to have a broad group of lawyers examine the legal and policy issues "when he learned of [the] concern."<sup>45</sup> DOD/GC appointed the Air Force General Counsel, Mary Walker, to head the working group.

The working group lawyers included staffs of TJAGs, GCs, and LC.<sup>46</sup> The group's report states that it was "informed by a Department of Justice opinion."<sup>47</sup> OLC influence was much more significant. Despite being specifically chartered by Secretary Rumsfeld to provide legal analysis in addition to policy advice, efforts to form and apply independent analysis were quickly terminated. Yoo attended



DOD (Robert D. Ward)

Former Defense Secretary Rumsfeld greets William J. Haynes II, DOD General Counsel, July 2001



an early working group meeting where he instructed the group on his views. Upon Haynes' request, Yoo provided another opinion upon which the working group legal review was based.<sup>48</sup> The report used "significant portions" of the OLC opinion verbatim and OLC edited the draft.<sup>49</sup> Working group members were shown, but were not allowed to copy, an unsigned, undated version of the Torture Memo and were directed by Walker to apply the OLC legal analysis. Comments and contributions that departed from the OLC opinion were dismissed.

TJAGs and Mora lodged their deep concerns about the working group legal analysis and absence of balanced policy considerations orally and by email to Walker. When that approach failed, TJAGs followed up with memos to Walker.<sup>50</sup> They then met with DOD/GC to express their concerns.

TJAGs and/or their staffs then met with their Service chiefs. The Joint Chiefs met on the issue in a Pentagon conference room called "the Tank." Around this time, DOD/GC met with Secretary Rumsfeld and provided him with the final working group report. On April 16, 2003, the Secretary authorized some of the interrogation techniques and instructed that further requests for expansion should come to him. TJAGs were not given the final working group report or an opportunity to formally concur or nonconcur. Haynes told at least one TJAG that Secretary Rumsfeld had seen TJAG comments, the report would go no further, and DOD would return to standard techniques. Until the report became public 14 months later, TJAGs and Navy GC believed the working group report had never been finalized. TJAGs did not know about later Secretary-approved requests for expanded techniques.

Eight months later, a new OLC chief determined that the Yoo-drafted OLC opinions upon which the working group report was based were so flawed that they had to be withdrawn and replaced. OLC immediately informed DOD/GC of the withdrawal. When TJAGs learned of this repudiation months later, they unanimously recommended the working group report be rescinded and the issues be reexamined with independent legal analysis. They met with senior policymakers and lawyers in an attempt to have the DOD controlling regulation revised to clarify and require compliance with the Geneva Conventions.

In April 2004, criminal detainee abuse at Abu Ghraib, Iraq, became public and Congress

immediately became involved. Over the next several years, at least a dozen military and congressional investigations examined interrogation issues. During this time, TJAGs spoke to Members of Congress and staffers, both publicly in testimony and in private, to provide their independent legal-policy opinions on various aspects of detainee treatment. Some investigations assert that the Guantanamo extraordinary interrogation techniques migrated to Iraq. Not all agree with the migration theory.

Recently, Susan Crawford, the former judge now in charge of the military commissions, stated that she was shocked, embarrassed, and upset by the interrogation of al-Kahtani. She declined to charge him in court because he had been tortured. The techniques objected to by TJAGs and Navy GC but authorized by Secretary Rumsfeld were applied in an "overly aggressive and too persistent" manner. She further stated:

*You think of torture, you think of some horrendous physical act done to an individual. This was not any one particular act; this was just a combination of things that had a medical impact on him, that hurt his health. It was abusive and uncalled for. And coercive. Clearly coercive. It was that medical impact that pushed me over the edge.<sup>51</sup>*

- failure to forward the Service legal-policy concerns
- prohibition of working group lawyers to apply independent legal analysis
- level of resistance to consideration of TJAG legal-policy concerns
- lack of opportunity to nonconcur on the final working group report or to know the report was finalized
- discussion with DOD/GC and at least one TJAG regarding Secretary Rumsfeld's decision to return to Army FM 34-52 techniques
- apparent senior administration lawyer direct involvement in operations at the joint task force level (discussions during visits to Guantanamo).

## Role and Responsibility Analysis

**Advocacy versus Advisory.** The later OLC-repudiated, Yoo-drafted detainee interrogation controlling legal opinions have been soundly criticized in the legal community as "cursory and one sided legal arguments."<sup>52</sup> The opinions were apparently based on the drafter's view that his job was that of policy-advocate, rather than advisor. Several former OLC lawyers insist the advocate role was inappropriate. TJAGs acted in accordance with their ethical responsibility to provide candid legal advice and policy considerations. Based on the historic and statutory role of TJAGs,

## Secretary Rumsfeld suspended use of the expanded techniques and instructed DOD/General Counsel to have a broad group of lawyers examine the legal and policy issues

### Process Analysis

The detainee interrogation legal-policy process was extraordinary. Several actions were unprecedented:

- DOD/GC solicitation of information on SERE training
- initial lack of a legal review for the Secretary of Defense written by anyone more senior than LTC Beaver for such a complex and strategic national security issue
- DOD/GC direct contact with the USSOUTHCOM operations staff without coordination with OCJCS/LC or the command's SJA
- DOD/GC verbal direction to USSOUTHCOM to implement the proposed techniques
- short-circuiting of legal reviews

War Council members should not have been surprised that judge advocates had a voice in legal-policy formation.

**Civilian Control of the Military.** Congress has repeatedly acted to ensure leaders are given the benefit of independent military legal advice. Each time a study or independent review panel has examined the primacy and control relationships between civilian and uniformed lawyers, the reviewers recognize that TJAGs (and LC) work with, not for, civilian lawyers. Together, they support constitutional civilian leadership over the military. The existence and independence of each must be maintained.

The relationship between TJAG independence and DOD/GC and OLC primacy remains nuanced. Law now prohibits DOD/GC from interfering with TJAG ability to provide

independent counsel.<sup>53</sup> It does not mention the Attorney General. The Presidential signing statement on the independence legislation instructs the executive branch to give primacy to the Attorney General and DOD/GC.<sup>54</sup> Policymakers are entitled to ask their military lawyers for legal-policy considerations such as missing Servicemember perspectives.<sup>55</sup>

Yoo alleges that TJAGs have no place in legal-policy formation and that they “undermined” civilian leadership through their actions, including testimony to Congress on their personal legal and policy analysis.<sup>56</sup> However, when asked, TJAGs’ constitutional duty and oath to Congress require them to provide Congress their legal and policy opinions, even when those opinions conflict with executive branch positions. They complied with those duties.

Since the rise of professional military forces, there has been tension between civilian control and military efficacy.<sup>57</sup> Policymakers may task their staffs (including lawyers) to act as their agents and circumvent standard processes. Reasons for such action include the need for speed, secrecy, desire to accomplish an action before objections are lodged, or lack of respect for the opinions of certain parties. When a policymaker declines to use the normal processes, he increases the chance his decision will not be sufficiently informed. Cutting offices out of the process can also harm morale and increase destructive behaviors such as leaks to the media. In this case, as a result of the altered processes, executive department leaders were not provided the full range of relevant, fully staffed legal-policy considerations. Only the principal policymakers can say whether they would have wanted more or if members of the War Council were acting in accordance with their direction.

Lawfare attacks will not diminish in frequency or intensity; legal-policy issues will not get easier; and there will not be fewer lawyers. Governmental processes lend order to the chaotic array of challenges. They ensure that policymakers receive vetted, well rounded advice. Leaders should hesitate to exclude key advisors from policymaking processes. GC and TJAG skills must be used in the intended complementary fashion. And judge advocates must continue to serve as independent advisors who provide candid legal-policy advice from the military perspective. **JFQ**

## NOTES

<sup>1</sup> Jack Goldsmith, *The Terror Presidency: Law and Judgment Inside the Bush Administration* (New York: Norton, 2007), 129–130.

<sup>2</sup> Harlan G. Wilder, “Independent Counsel by Design,” *Wright Stuff* 2, no. 12 (2007).

<sup>3</sup> Susan Crawford, quoted by Bob Woodward, “Detainee Tortured, Says U.S. Official: Trial Overseer Cites ‘Abusive’ Methods Against 9/11 Suspect,” *The Washington Post*, January 14, 2009, A1.

<sup>4</sup> James E. Baker, *In the Common Defense: National Security Law for Perilous Times* (Cambridge: Cambridge University Press, 2007), 311.

<sup>5</sup> Kevin M. Sandkuhler, Memorandum for General Counsel of the Air Force, Subject: Working Group Recommendations on Detainee Interrogations, February 27, 2003.

<sup>6</sup> Kurt A. Johnson, “Military Department General Counsel as ‘Chief Legal Officers’: Impact on Delivery of Impartial Legal Advice at Headquarters and in the Field,” *Military Law Review* 139, no. 1 (1993), 40.

<sup>7</sup> Charlie Savage, *Takeover: The Return of the Imperial Presidency and the Subversion of American Democracy* (New York: Little, Brown, 2007), 279–289.

<sup>8</sup> 10 U.S.C. §§ 3037 (Army), 5046 (Marine Corps), 5148 (Navy), 8037 (Air Force); U.S. Congress, Conference Report 108–767 Regarding H.R. 4200, Ronald Reagan National Defense Authorization Act for FY 2005 (Washington, DC, 2004).

<sup>9</sup> After one review of the possibility of consolidating OCJCS/LC and DOD/GC, General Henry H. Shelton wrote to Secretary Rumsfeld: “While you and I usually agree on issues, there may be times when my military advice, and that of the Joint Chiefs of Staff, may differ from your position. Likewise, the separation of functions and responsibilities of the officers that has heretofore existed allows the examination of issues from the military perspective independent of that of the OSD organizations. While their advice is frequently in accord, there are occasions when they diverge.” Henry H. Shelton, Memorandum for Secretary of Defense, Subject: Consolidation of Offices, August 22, 2001. This memo was signed shortly before Secretary Rumsfeld’s remarks about the large numbers of legal offices in the Pentagon.

<sup>10</sup> National Defense Authorization Act for Fiscal Year 2008, Pub. L. no. 110–181, § 543, 122 Stat. 115, January 28, 2008.

<sup>11</sup> Independent Review Panel to Study the Relationships between Military Departments General Counsels and Judge Advocates General, “Legal Services in the Department of Defense: Advancing Productive Relationships,” Washington, DC, September 15, 2005.

<sup>12</sup> 10 U.S.C. §§ 3037 (Army), 5148 (Navy), 5046 (Marine Corps), 8037 (Air Force).

<sup>13</sup> 10 U.S.C. § 806.

<sup>14</sup> 10 U.S.C. § 801, et seq.; 10 U.S.C. §§ 3037 (Army), 5148 (Navy), 5046 (Marine Corps), 8037 (Air Force).

<sup>15</sup> 28 U.S.C. §§ 510, 511, 512; 28 C.F.R. § 0.25.

<sup>16</sup> 28 C.F.R. § 0.25(e).

<sup>17</sup> See U.S. Army, *Army Rules of Professional Conduct For Lawyers*, Army Regulation (AR) 27–26, Legal Services (Washington DC, 1992), preamble.

<sup>18</sup> U.S. Air Force, *Air Force Rules of Professional Conduct and Standards for Civility*, Attachment 1, TJS–2, Rule 2.1, Advisor (Washington DC, 2005); AR 27–26, Rule 2.1, Advisor; U.S. Navy, *Navy Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of The Judge Advocate General*, JAG 5803.1C (Washington DC, 2004), Rule 2.1, Advisor. The Service rules are modeled after the American Bar Association Model Rules of Professional Conduct.

<sup>19</sup> Edward F. Rodriguez, unpublished remarks to Air Force Reserve Forces Judge Advocate Course 99–A, The Air Force Judge Advocate General’s School, January 7, 1999.

<sup>20</sup> Jack L. Rives, “Expeditionary Law: Remarks on How to Succeed in the Deployed Environment,” *Air Force Law Review* 51 (2001), 349. Lieutenant General Rives was involved in the issue first as then–Major General Rives, Deputy Judge Advocate General, and later as TJAG.

<sup>21</sup> Larry O. Natt Gantt II, “More Than Lawyers: The Legal and Ethical Implications of Counseling Clients on Nonlegal Considerations,” *The Georgetown Journal of Legal Ethics* 18, no. 2 (2005); Richard B. Bilder and Detlev F. Vagts, “Editorial Comment: Speaking Law to Power: Lawyers and Torture,” *The American Society of International Law American Journal of International Law* 98, no. 4 (2004).

<sup>22</sup> Gantt.

<sup>23</sup> American Bar Association, “Rule 2.1, Comment: Scope of Advice,” Model Rules of Professional Conduct (1983, as amended).

<sup>24</sup> The Air Force and Army rules state that the lawyer “may” refer to these additional matters. The Navy/Marine Corps rules state the lawyer “should” so refer. TJS–2, Rule 2.1, Advisor; AR 27–26, Rule 2.1, Advisor; JAG 5803.1C, Rule 2.1, Advisor.

<sup>25</sup> The Army rule is quoted. The Air Force rule omits the word *moral*, thereby neither advocating for, nor prohibiting, such discussions. Army and Navy rules include the word *moral*. AR 27–26, Rule 1.2; JAG 5803.1C, Rule 1.2, which is substantially similar to the quoted rule; TJS–2, Rule 1.2(d).

<sup>26</sup> TJS–2, Rule 1.4; AR 27–26, Rule 1.4; JAG 5803.1C, Rule 1.4.

<sup>27</sup> State Bar of Arizona, Committee on Rules of Professional Conduct, Opinion 97–06 (1997).

<sup>28</sup> Air Force general and senior officer commanders’ and vice commanders’ responses to

proposed reduction of legal office staffs, 2006 (on file at Air Force TJAG Action Group); Secretary of the Air Force Michael W. Wynne, unpublished comments to Air Force JAG Corps senior judge advocate meeting, 2005 (on file at Air Force TJAG Action Group).

<sup>29</sup> Jeh C. Johnson, unpublished remarks to The Air Force Judge Advocate General's Keystone Leadership Summit, October 2007.

<sup>30</sup> Dawn E. Johnsen, "Guidelines for the President's Legal Advisors," *Indiana Law Journal* 81 (Fall 2006); Dawn E. Johnsen, "All the President's Lawyers: How to Avoid Another 'Torture Opinion' Debacle," *American Constitution Society for Law and Policy* (July 2007), available at <www.acslaw.org/files/Dawn%20Johnsen%20July%202007.pdf>.

<sup>31</sup> Yoo and others who support the "unitary executive theory" apparently do not agree that members of the Armed Forces should testify to Congress contrary to the administration. Instead, they emphasize the officer's duty to the Commander in Chief.

<sup>32</sup> Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations* (Cambridge: President and Fellows of Harvard College, 1957), 415.

<sup>33</sup> Facts not previously reported in the various congressional hearings, testimony, reports, articles, and books on detainees were gleaned by the author's interviews of lawyers and others personally involved in the process. Organizations in which they served include JCS, military Services, U.S. Southern Command, and JTF-170.

<sup>34</sup> Goldsmith, 22.

<sup>35</sup> Jane Mayer, *The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals* (New York: Doubleday, 2008), 88.

<sup>36</sup> Senate Armed Forces Committee Inquiry into the Treatment of Detainees in U.S. Custody (2008).

<sup>37</sup> Douglas J. Feith, *War and Decision: Inside the Pentagon at the Dawn of the War on Terrorism* (New York: HarperCollins, 2008), 159–165.

<sup>38</sup> George W. Bush, Memorandum for the Vice President et al., Subject: Humane Treatment of al-Qaeda and Taliban Detainees, February 7, 2002.

<sup>39</sup> The JTF-170 mission involved DOD detainee interrogation operations and inter-agency coordination of Guantanamo detainee interrogations.

<sup>40</sup> Philippe Sands, "The Green Light," *Vanity Fair* (May 2008).

<sup>41</sup> Richard Shriffrin, testimony to Senate Armed Forces Committee Inquiry into the Treatment of Detainees in U.S. Custody, June 17, 2008.

<sup>42</sup> Jay S. Bybee, Memorandum for White House Counsel, Subject: Standards of Conduct for Interrogation Under 18 U.S.C. §§ 2340–2341A, August 1, 2002.

<sup>43</sup> William J. Haynes II, Memorandum for Secretary of Defense, Subject: Counter-Resistance Techniques, November 27, 2002.

<sup>44</sup> Donald H. Rumsfeld, Memorandum for Commander USSOUTHCOM, Subject: Counter-Resistance Techniques, December 2, 2002.

<sup>45</sup> Department of Defense, "DoD Provides Details on Interrogation Process," June 22, 2004, available at <www.defenselink.mil/releases/release.aspx?releaseid=7487>: "On Jan. 15, 2003, the secretary of defense rescinded the Dec. 2 guidance when he learned of concern about the implementation of the techniques." See also Donald H. Rumsfeld, Memorandum for Department of Defense General Counsel, Subject: Detainee Interrogations, January 15, 2003.

<sup>46</sup> Department of Defense, Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy and Operational Considerations (Washington, DC: Department of Defense, April 14, 2003).

<sup>47</sup> *Ibid.*, 2.

<sup>48</sup> John Yoo, Memorandum for Department of Defense General Counsel, Subject: Military Interrogation of Alien Unlawful Combatants Held Outside the United States, March 12, 2003. As with the Torture Memo, this memo was classified as "secret," and the JAGs did not see the signed opinion until it was declassified in 2008.

<sup>49</sup> Michael F. Lohr, Memorandum for the Air Force General Counsel, Subject: Comments on the 6 March 2003 Detainee Interrogation Working Group Report, March 13, 2003; Vivia Chen, "Interrogation Memo Puts Air Force Counsel in Hot Seat," *The American Lawyer* (August 6, 2004), available at <www.law.com/jsp/article.jsp?id=1090180294718>. Of note, the working group report and both of the relevant OLC legal opinions remained classified until after the disclosure of the criminal abuses at Abu Ghraib.

<sup>50</sup> Jack L. Rives, Memorandum for Secretary of the Air Force (SAF) GC, Subject: Final Report and Recommendations of the Working Group to Assess the Legal, Policy and Operational Issues Relating to Interrogation of Detainees Held by the U.S. Armed Forces in the War on Terrorism, February 5, 2003; Jack L. Rives, Memorandum for SAF/GC, February 6, 2003; Kevin M. Sandkuhler, Memorandum for General Counsel of the Air Force, February 27, 2003; Thomas J. Romig, Memorandum for General Counsel of the Air Force, Subject: Draft Report and Recommendations of the Working Group to Access the Legal, Policy and Operational Issues Related to Interrogation of Detainees Held by the U.S. Armed Forces in the War on Terrorism, March 3, 2003; Michael F. Lohr, Memorandum for the Air Force General Counsel, Subject: Working Group Recommendations Relating to Interrogation of Detainees, February 6, 2003; Michael F. Lohr,

Memorandum for the Air Force General Counsel, March 13, 2003.

<sup>51</sup> Woodward.

<sup>52</sup> Goldsmith, 149.

<sup>53</sup> The statute reads: "No officer or employee of the Department of Defense may interfere with the ability of the Judge Advocate General to give independent legal advice to the Secretary of the [Service] or the [Chief of Staff of the Service or Chief of Naval Operations]." See 10 U.S.C. §§ 3037 (Army), 5148 (Navy), 5046 (Marine Corps), 8037 (Air Force).

<sup>54</sup> The signing statement instructs the executive branch to construe the statute "in a manner consistent with . . . the exercise of statutory authority by the Attorney General (28 U.S.C. 512 and 513) and the general counsel of the Department of Defense as its chief legal officer (10 U.S.C. 140) to render legal opinions that bind all civilian and military attorneys within the Department of Defense." George W. Bush, "Statement on Signing the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005," Weekly Compilation of Presidential Documents (Washington, DC: The White House, October 28, 2004).

<sup>55</sup> As the Senior Marine Corps lawyer wrote in his objection to the Walker working report, "OLC does not represent the services; thus, understandably, concern for servicemembers is not reflected in their opinion." See Kevin M. Sandkuhler, Memorandum for General Counsel of the Air Force, February 27, 2003.

<sup>56</sup> Glenn Sulmasy and John Yoo, "Challenges to Civilian Control of the Military: A Rational Choice Approach to the War on Terror," *UCLA Law Review* 54 (2007), 1,834; Michael L. Kramer and Michael N. Schmitt, "Lawyers on Horseback? Thoughts on Judge Advocates and Civil-Military Relations," *University of California Law Review* 55 (June 2008); Victor Hansen, "Understanding the Role of Military Lawyers in the War on Terror: A Response to the Perceived Crisis in Civil-Military Relations" (forthcoming, 2009).

<sup>57</sup> Eliot A. Cohen, *Supreme Command: Soldiers, Statesmen and Leadership in Wartime* (New York: The Free Press, 2002).



# Institutional Ethics

## Drawing Lines for Militant Democracies

By HARVEY RISHIKOF

Harvey Rishikof is Professor of National Security Law and former Chair of the Department of National Security Strategy at the National War College.

At his 2009 confirmation hearing for Attorney General of the United States, Eric Holder was asked whether he would pursue a criminal investigation of the interrogation programs of the Bush administration. He responded, “Senator, no one’s above the law, and we will follow the evidence, the facts, the law, and let that take us where it should.”<sup>1</sup> But he added, quoting Barack Obama, then-President-elect, “We don’t want to criminalize policy differences” and finally pleaded for time to study the matter. “One of the things I think I’m going to have to do,” Holder added, “is to become more familiar with what happened that led to the implementation of these policies.”

Many articles on ethics begin with the notion that the term *ethics* derives from the Greek word *ethika*, from *ethos*, meaning “character” or “custom” based on individual behavior. From this we deduce principles or a standard of human conduct, often termed *morals* (from the Latin *mores*, “customs”). By extension, the study of such principles becomes the foundation of moral philosophy. The focus or unit of analysis is the individual, and the question is, “What is the right thing to do?”

In the vast literature of personal responsibility, few works ever discuss the concept of “institutional ethics,” or how institutions should act to produce rules of behavior for themselves and those under their jurisdiction.

**Witness to 2003 Lendu militia crimes against civilians in Democratic Republic of the Congo holds skull of alleged victim**

This concept, however, would not have been alien to our Founding Fathers. A cornerstone of the Federalist Papers on how to avoid tyranny was the struggle among and between institutions. One of the most quoted but least analyzed passages from James Madison, from the perspective of institutional ethics, is in Federalist No. 51, *The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments*, which states:

*But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.*

These “auxiliary precautions” were the different institutions of power, or the separation of power, by which the different departments standing on constitutional means would resist encroachments from each other. Our federalism itself is an institutional battle of the appropriate power owed to each sovereign. These encroachments are politically charged discussions since constitutional institutional prerogatives are at stake. The struggle determines the notion of who can decide, as an institutional matter, what the “right thing” to do is. This important insight was underscored by Judith Shklar, the acclaimed political philosopher, in *The Faces of Injustice*, in which she noted that the “line of separation

between injustice and misfortunes is a political choice, not a simple rule that can be taken as given. The question is, thus, not whether to draw a line between them at all, but where to do so in order both to enhance responsibility and to avoid random retaliation.”<sup>2</sup>

The political choice of where to draw the line sets public policy, which in turn establishes public morals and sets public responsibility for individuals. The resulting political framework creates criminal and civil liability for public officials and servants of the state. The tensions among our ideals over justice, necessity, individual responsibility, and authority are raised by these hard cases of line drawing, particularly when national security is involved.

To explore this puzzle, this article raises the question, “How do institutions discharge their ethical duties to shape public responsibility?” The three following examples address this question.

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### *our federalism itself is an institutional battle of the appropriate power owed to each sovereign*

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The first example contrasts the understanding of command responsibility under our Uniform Code of Military Justice (UCMJ) and the international convention Protocol I. The second reviews the Israeli Supreme Court decision on its approach to targeted killing. Finally, to round out the discussion of institutions and individual liability, the third examines how Congress should approach the debate over alleged past violations of the law of interrogation.

#### **Paradigms for Commander Responsibility**

Our domestic legal codes and international conventions set the framework for our views of the rule of law and individual responsibility. On the individual level, take, for example, the contrast between the UCMJ and Protocol I under the Geneva Conventions when malfeasance takes place in a military command. How do these two regimes institutionally hold military commanders responsible? What is the standard of culpability under the two legal regimes? Victor Hansen points out that in cases stemming from the Vietnam era and the My Lai

massacre, the prosecution of the Charlie Company commander, Captain Ernest Medina, established the classic criminal standard for culpability under the common law.<sup>3</sup> As Hansen notes, the evidence at trial established that Captain Medina was within a few hundred yards of the village for some 3 hours while his subordinates were killing unarmed civilians. There was no evidence, however, that he either took part in the killings or issued direct orders to his Soldiers to kill the villagers.

Under criminal common law as stipulated by the UCMJ, the judge in the case rejected an intentional murder charge and reduced the charge to involuntary manslaughter, which required showing that Captain Medina had a legal duty to take some action to prevent the unlawful killing and to prove that he possessed actual knowledge of his Soldiers’ law of war violations when he failed to act. The actual panel charge from the judge is quoted in the Hansen article as follows:

*In relation to the question pertaining to the supervisory responsibility of a Company Commander, I advise you that as a general principle of military law and custom a military superior in command is responsible for and required, in the performance of his command duties, to make certain the proper performance by his subordinates of their duties assigned by him. In other words, after taking action or issuing an order, a commander must remain alert and make timely adjustments as required by a changing situation. Furthermore, a commander is also responsible if he has actual knowledge that the troops or other persons subject to his control are in the process of committing or are about to commit a war crime and he wrongfully fails to take the necessary and reasonable steps to insure compliance with the law of war. You will observe that these legal requirements placed upon a commander require actual knowledge plus a wrongful failure to act. Thus, mere presence at the scene without knowledge will not suffice. That is, the commander-subordinate relationship alone will not allow an inference of knowledge. While it is not necessary that a commander actually see an atrocity being committed, it is essential that he know that his subordinates are in the process of committing atrocities or are about to commit atrocities [emphasis added].*



This actual knowledge standard resulted in the acquittal of Captain Medina.

Compare this *mens rea* (guilty mind) and *actus rea* (guilty act) and actual knowledge obligation under the UCMJ to Protocol I, where Articles 86 and 87 represent the codification of the command responsibility doctrine. The articles state both a standard for failure to act and duty to act:

*Article 86. Failure to Act*

*1. The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so.*

*2. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be if they knew or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.*

*Article 87. Duty of Commanders*

*1. The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol.*

*2. In order to prevent and suppress breaches, High Contracting Parties and Parties to the conflict shall require that, commensurate with their level of responsibility, commanders ensure that members of the armed forces under their command are aware of their obligations under the Conventions and this Protocol.*

*3. The High Contracting Parties and Parties to the conflict shall require any commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions or of this Protocol, to initiate such*

*steps as are necessary to prevent such violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof.*

As noted by Hansen, when these two articles—Article 86 and Article 87 under Protocol I—are read together, the result codifies the doctrine of command responsibility. Violations of the law of war can occur through acts of omission when a duty to act exists and further recognizes that a commander, due to his special responsibility, can be criminally responsible for war crimes committed by his subordinates. Understanding that commanders have unique responsibilities to ensure their troops' observance of the law of war, Article 87 sets out in general terms what a commander must do to meet those obligations—this is the *should or should have known standard* that was used in the Yamashita military tribunal.<sup>4</sup> After World War II, General Tomoyuki Yamashita

*understanding that commanders have unique responsibilities to ensure their troops' observance of the law of war, Article 87 sets out what a commander must do to meet those obligations*

Serb forces wrought massive and wanton destruction in Kosovo



NATO



of Japan was held responsible by the tribunal for the brutal atrocities and crimes of his troops in the Philippines, and his claims that he never ordered or gave permission for the actions, or had knowledge or control of the troops' actions, were rejected. The tribunal concluded that since the acts were not sporadic but methodically supervised by the officers, he had not provided effective control of the troops as was required by the circumstances.<sup>5</sup> In short, the defense of not knowing, or not being directly involved, was rejected.

For the purposes of the concept of institutional ethics, the point is that Congress, by accepting the criminal common law standard and not the Yamashita standard, or the international standard of Protocol I (since we are not signatories to the protocol), establishes a different set of institutional incentives and obligations for our command structure. This institutional difference becomes particularly acute when we jointly deploy with our allies, who approach the issue of malfeasance under the "should or should have known" obligation versus the more restrictive "direct knowledge" requirement established currently for U.S. law.

### Israeli Institutional Court View

Contrast this sense of institutional ethics with the decision of the Israeli supreme court in *The Public Committee Against Torture in Israel, et al. v. The Government of Israel, et al.* (HJC 769/02, December 11, 2005) on the legality of "targeted killings" or, as characterized by the court, "preventative strikes" against terrorists that at times also harm innocent third-party civilians. The opinion is a model for how to analyze institutional and ethical issues and processes for the Israel Defense Forces in the projection of force. At the outset, the court held that struggle in the West Bank and Gaza at that time was an armed conflict of an international character and that all international armed conflict is a compromise or balance between military necessity and humanitarian requirements. Under the law of armed conflict, the essential requirement for the lawful use of force entails the separation of individuals into combatants and noncombatants, or civilians. Commanders, under international customary law, have a duty both to refrain from acts that harm civilians and to take necessary action to ensure that civilians are not harmed.

What, then, is the status of terrorists and civilians taking part in the armed conflict? For the court, the terrorists, since they did not

conduct their operations in accordance with the laws and customs of war, were "unlawful combatants," but should these so-called unlawful combatants then be viewed as civilians under the law? The court concluded that they should not. The state of Israel argued that unlawful combatants are legitimate targets for attack as long as they are taking an active and continuous direct part in the hostilities. The court refused, however, to recognize this third category proffered of unlawful combatants under The Hague and Geneva Conventions and preferred analyzing the case as *civilians* who constitute unlawful combatants. This distinction became important for the court based on the remedy and process that it would craft. This distinction is critical because it places on the forces projecting power additional duties of obligation since, as a civilian, more responsibility is required.

As civilians taking a *direct part in hostilities*, the court concluded that under customary international law, the civilians no longer enjoyed the protection granted civilians and became lawful targets. But for the court, the question then arose: When does one take a direct part in hostilities? Bearing arms and heading to or from a fight is clear, but what of the gray areas—selling food and medicine or giving monetary aid to hostile forces, or not preventing incursions of hostile armed parties? Are such behaviors directly participating? What of those who recruit or send civilians into hostilities? Does "direct" mean the last actor in the chain of command or the whole chain of authority? The court rejected a "narrow" definition of the chain of command and reasoned that those who decided upon the violent act, planned the act, and sent the actor had made a direct and active contribution and therefore could be targeted. When does one become part of the chain of command of terrorist acts? Is a single act of participation enough, or does one have to be part of a series of hostile acts? Can one participate, take a few months off, and then rejoin in a "revolving door" fashion?

The court's resolution of this dilemma was to announce a four-part test before a strike could take place. First, information identifying a potential unlawful combatant civilian target would have to be "thoroughly verified." Second, if the actor could be arrested, interrogated, and tried, this less harmful means would be required in lieu of force. The requirement flowed from the fact that the target was a civilian acting unlawfully under international law.

Third, after the attack on a civilian suspected of directly participating in the hostilities, an independent, thorough investigation of the validity of the identification of the target and the circumstances surrounding the decision would be required by a review committee. Finally, if innocent third-party civilians were killed or injured due to collateral damage, the

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*under the law of armed conflict, the essential requirement for the lawful use of force entails the separation of individuals into combatants and noncombatants*

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degree of force used would have to withstand the traditional proportionality test. The degree of collateral damage could not be excessive to the concrete and direct military advantage anticipated by the use of force under a values-based test.<sup>6</sup>

**With this photograph as supporting evidence, the International Criminal Tribunal of Former Yugoslavia convicted Bosnian Serb Goran Jelić of crimes against humanity and violating customs of war**



Courtesy of ICTY

Critics of the decision argued that the issues presented by targeted killings were political and military in nature and that the court should have concluded that they were nonjusticiable. The court, however, appears to be rejecting the Shklar formulation that decisions in this area are more political, reasoning instead that these issues are dominantly of a legal character:

*When the character of the disputed question is political or military, it is appropriate to prevent adjudication. However, when that character is legal, the doctrine of institutional nonjusticiability does not apply. . . . The questions disputed in the petition before us are not questions of policy. Nor are they military questions. The question is whether or not to employ a policy of preventative strikes which cause the deaths of terrorists and at times of nearby innocent civilians. The question is—as indicated by the analysis of our judgment—legal; the question is the legal classification of the military conflict taking place between Israel and terrorists from the area; the question is the existence or lack of existence of customary international law on the issue raised by the petition; the question is of the determination of the scope of that custom, to the extent that it is reflected in §51(d) of The First Protocol; the question is of the norms of proportionality applicable to*

*the issue. The answers to all of those questions are of a dominant legal character.*<sup>7</sup>

The court drew the line and concluded that this was a legal issue. Rejecting the view of Cicero that “during war, the laws are silent” (*silent enim legis inter arma*), the court opined, “[I]t is when the cannons roar that we especially need the laws.”<sup>8</sup> The court felt obliged to determine whether the executive had not a reasonable understanding, but rather a correct understanding, of the law. It could not, in its own words, “liberate itself from the burden of that authority.”<sup>9</sup> Under this formulation, the court would determine whether a “reasonable” military commander would have made a similar decision under the circumstances when weighing the issues of necessity and the zone of

The Attorney General and Director of National Intelligence stated under oath in their confirmation hearings that, in their opinions, “waterboarding” is torture. This assessment on waterboarding comports with international law and the Geneva Conventions since we once prosecuted those in World War II for employing such an interrogation technique.<sup>11</sup> As is well known, the Bush administration and the past Attorney General would not concede that the coercive methods employed for interrogations constituted torture under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Moreover, as has been made public, waterboarding has been used in military survival, evasion, resistance, and escape training for our own pilots for

*the court recognized that the struggle against terrorism was turning the Israeli democracy into a “defensive” or “militant” democracy and that there could be no security without law*

proportionality. The court would do this retrospectively, and it would review the examination of the institutional review committee. Finally, the court recognized that the struggle against terrorism was turning the Israeli democracy into a “defensive” or “militant” democracy and that there could be no security without law. Given its institutional role, the court would therefore have to determine what is forbidden—what is legal and what is illegal.

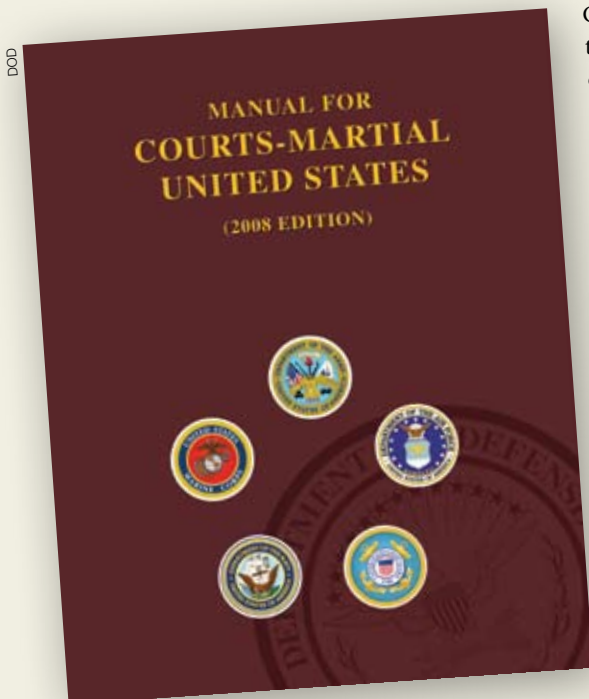
### Congress and Interrogation-Prosecution Issues

How do the previous two case studies help inform our current debate over the issue of interrogation techniques and the appropriate role of the institutional parties? President Obama’s executive orders to close Guantanamo, stay detainee proceedings, and end “torture” interrogations through the use of the Army Field Manual have prominently signaled a new approach to the most controversial national security policies of the Bush administration.<sup>10</sup> This proposed executive review has deservedly been greeted with general approval. The Special Interagency Task Force on Interrogation and Transfer Policies established by the executive orders is an excellent start to what should be a bipartisan assessment of the current situation and where we should go from here.

decades, based on the assumption that our military would experience such treatment when captured by enemies.

Despite this long-needed new policy assessment by the Obama administration, demands have been made on Congress to hold hearings on the process by which these unlawful techniques were approved and on the Department of Justice to launch investigations to determine if criminal charges should be made against members of the previous administration. Some have even called for investigations by state officials of the attorneys involved in the approval process to strip them of their state bar memberships. This congressional hearing approach would be a version of the Iran-Contra hearings, the same hearings that generated the minority report for then-Congressman Richard Cheney and then-minority staff counsel David Addington. This report contended that the findings of the hearings were an unconstitutional restraint on the Office of the Presidency and a criminalization of political disagreements.

Although we all are sympathetic to this call for justice, as a policy matter and as a guide to executive behavior for future Presidents, this purely executive response may not be the most constitutionally strategic approach to take. To have a full and open discussion, congressional immunity should be granted to all who participated in the process pursuant to a specific Presidential



Sources of military jurisdiction include the Constitution and international law, including the law of war



order or finding under the National Security Act of 1947. To prosecute low-level officials who believed they were acting under the color of law and not those who gave the orders would be a miscarriage of justice. These were *Presidential* decisions invoking reasons of necessity and reasons of state for preservation. We may vigorously disagree with the approach, but under one current understanding of Presidential power, such reasons accord the chief executive and Commander in Chief great flexibility to exercise the prerogatives of his office in the aftermath of an attack on the homeland.

To be sure, those who acted *ultra vires* (beyond their authority) and have no order, or finding, to justify their actions should be denied immunity and prosecuted. The goal of the legislative commission would be to clearly establish a set of procedures, processes, and rules involving the key political policy players and their attorneys in the event that a future President recommends any deviation from the Geneva Conventions again. Under the Geneva Conventions, only name, rank, age, and serial number are required, and as the Army Field Manual stipulates, only certain techniques are authorized. But a new President or a new set of circumstances that present a necessity defense could overturn these current restraints once again, depending on what the Special Interagency Task Force on Interrogation and Transfer Policies recommends. The decision to deviate from the Geneva Conventions and international law should not reside with the President alone. The Constitution clearly vests part of this right with Congress under Article I, Section 8, which states that it is the power of Congress:

*To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;*

*To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water.*

The commission's report for Congress should include model legislation that would create a process that would have to include both the executive and legislative branches, a clearly recognized group of decisionmakers by statute, and a full set of procedures as does our current, albeit weak, legislation governing covert actions. Deviation from this process by any President would be grounds for impeachment, and practitioners asked to

perform such extrajudicial actions would be able to point to the legislation if the process had not been complied with to the letter. This defense for lower officials does not exist in the face of a new executive covert finding made tomorrow. In short, the President could order torture tomorrow based on his view of the Convention Against Torture. Those officials following the orders would have no defense to not follow them.

As the previous example of the Israeli court institutional ethic reveals, the authorities vested with the duty and obligation to craft rules shirk their institutional duty when they fail to act. The institutional ethical boundaries must be set for the individuals charged to act and perform their duty. All democratic states have defenses of necessity to disobey laws under a "reason of state" or for "peace, order, and good government." This is how martial law is invoked or due process rights are suspended.

Under our Constitution, as has been made clear by recent Supreme Court decisions, only the legislature can suspend the writ of habeas corpus and only under special circumscribed circumstances:

"when in cases of rebellion or invasion the public safety may require it." Some argue that there is a set of techniques that fall between Geneva rights and torture that are not covered by the Army Field Manual. How would a practitioner know if asked to perform one of these procedures under a new executive order if he were breaking the law if the legislative branch did not also concur? Presidential action alone is not sufficient, and this is why such a commission should be convened immediately and tasked to establish a set of procedures for the executive and legislative branches that

*institutional ethical boundaries must be set for the individuals charged to act and perform their duty*

clearly defines a process that the executive branch must follow for interrogations and prosecutions of prisoners captured in the struggle against extremism. The issues of capture, interrogation, prosecution forums, and detention all are part of the same chain



International War Crimes Tribunal, founded by UN resolution in 1993, has mandate to prosecute and try violators of international humanitarian law

NATO



of custody that needs to be reviewed so all alternatives are fully explored.

The commission should work with the Presidential Special Interagency Task Force on Interrogation and Transfer Policies as a joint institutional method not only to protect our soldiers and others asked to perform such tasks in the future, but also to design a system that we can be proud of that comports with our longstanding tradition to respect the rule of law. Our Constitution, as noted in the often quoted insight by Edward Corwin, an acclaimed constitutional scholar, is an invitation to struggle for the privilege of directing American foreign policy; the power to determine the substantive content of American foreign policy is a divided power.

Immunity is important for those of the past administration who acted under color of law, not to condone what happened but to remove the potential protracted legal battle that will surely ensue if a criminal process is launched. Moreover, immunity will allow the commission to quickly get to the truth of why the procedures were thought necessary and what, if anything, was gained by them.

The true path for final justice and strategic advantage is to ensure that if any future President is confronted with a “ticking time bomb” scenario, the decision of what to do will not rest with him alone, but will require a showing of necessity under a process and a set of procedures for both the executive and legislative branches. Actions taken outside of the proscribed and published procedures will still be a crime, but a recognized process not solely controlled by the President will have established the necessity defense. This is the only way to ensure that coercive interrogation never happens again, and if it is contemplated for whatever reason, it cannot be hidden behind executive privilege and prerogative. This is what institutional ethics requires, and it is a discussion our Founding Fathers hoped would take place.

The three examples in this article illustrate how political and legal institutions that create policy shape the ethical and moral terms of our public responsibility. Where to draw the line is ultimately a political decision, but it is a political decision that must be buttressed by law. In a democracy, the institutions of power must struggle together for the just answers.

Political theorist Michael Walzer best captures this concept of the ethical struggle in his discussion of emergency ethics when a state is confronted with a “supreme emergency” or when our deepest values and our collective survival are in imminent danger.<sup>12</sup> For some in this debate, only a moral absolutist position is tenable; one should never deviate from one’s ethical compass regardless of the situation. One must act morally regardless of consequences—*fiat justitia, ruat caelum* (do justice even if the heavens fall). This is the moral suicide pact doctrine where normal or traditional values and rights cannot be trumped by consequences or contexts.

To others who take a more utilitarian view of supreme emergency, one must weigh the costs and benefits in context and act accordingly; necessity means dirty hands. But in these existential moments, how does one assign values where there is no recognized hierarchy of values—one life is worth how many? When does the principle of proportionality become arbitrary? This is, for Walzer, the ethical dilemma, which sets the utilitarianism of extremity against the rights, or morality, of absolutism.

How does one escape the ethical dilemma? For Walzer, again, action under a supreme emergency rests on a communitarian doctrine of how we view our group identity and our collective self-understanding. In the United States under the Constitution, it is the political community that frames our collective identity, and it is our collective political institutions that must resolve the dilemma—the President, Congress, and Supreme Court. We cannot defer the decision to one power; although public policy creates our public morals, we must shoulder public responsibility collectively. This is how democracies at war should draw public ethical lines, as each institution also should to the extent of its constitutional power. A political community, as Edmund Burke properly understood, is a contract among “those who are living, those who are dead, and those who are yet to be born.”<sup>13</sup> Institutional ethics and rule of law must prevail when force is projected. **JFQ**

The author thanks Trudi Rishikof for her assistance in preparing this article.

## NOTES

<sup>1</sup> See Scott Shane, “Remarks on Torture May Force New Administration’s Hand,” *The New York Times*, January 16, 2009, available at <[www.nytimes.com/2009/01/17/us/politics/17detain.html?ref=todayspaper](http://www.nytimes.com/2009/01/17/us/politics/17detain.html?ref=todayspaper)>.

<sup>2</sup> Judith N. Shklar, *The Faces of Injustice* (New Haven: Yale University Press, 1990), 5.

<sup>3</sup> See Victor Hansen, “What’s Good for the Goose Is Good for the Gander: Lessons from Abu Ghraib: Time for the United States to Adopt a Standard of Command Responsibility Towards Its Own,” *Gonzaga Law Review* 42, no. 1 (2006–2007).

<sup>4</sup> *In re Yamashita*, 327 U.S. 1 (1946).

<sup>5</sup> As noted by Hansen, scholars still debate what the case means for command responsibility. Some have contended that Yamashita created a strict liability standard, while others maintain that the Yamashita standard is that a commander may be held criminally liable if he knew or should have known of the commission of war crimes by his forces. Still other scholars have contended that the Yamashita standard is that liability should attach if the commander knew or must have known of the war crimes. Finally, others contend that the real issue for the tribunal was General Yamashita’s total ignorance and complete delegation of authority, which created an unacceptable risk of future harm for future crimes. See Hansen, 23–24.

<sup>6</sup> See *The Public Committee Against Torture in Israel, et al., v. The Government of Israel, et al.* (HJC 769/02, December 11, 2005, Para. 60), available at <[http://elyon1.court.gov.il/Files\\_ENG/02/690/007/a34/02007690.a34.pdf](http://elyon1.court.gov.il/Files_ENG/02/690/007/a34/02007690.a34.pdf)>.

<sup>7</sup> *Ibid.*, para. 50.

<sup>8</sup> *Ibid.*, para. 61.

<sup>9</sup> *Ibid.*, para. 56.

<sup>10</sup> See “Executive Order—Ensuring Lawful Interrogations,” January 22, 2009, available at <[www.whitehouse.gov/the\\_press\\_office/EnsuringLawfulInterrogations/](http://www.whitehouse.gov/the_press_office/EnsuringLawfulInterrogations/)>.

<sup>11</sup> See Walter Pincus, “Waterboarding Historically Controversial,” *The Washington Post*, October 5, 2006, A17, available at <[www.washingtonpost.com/wp-dyn/content/article/2006/10/04/AR2006100402005.html](http://www.washingtonpost.com/wp-dyn/content/article/2006/10/04/AR2006100402005.html)>.

<sup>12</sup> See Michael Walzer, *Arguing about War* (New Haven: Yale University Press, 2004), chap. 3, “Emergency Ethics.”

<sup>13</sup> Edmund Burke, *Reflections on the Revolution in France* (London: J.M. Dent, 1919), 93, qtd. in Walzer, 14–15.

# Law and Ethics

By JAMES P. TERRY

Colonel James P. Terry, USMC (Ret.), is the Chairman of the Board of Veterans Appeals in the Department of Veterans Affairs. He previously served as Principal Deputy Assistant Secretary and Deputy Assistant Secretary in the Department of State and as Legal Counsel to the Chairman of the Joint Chiefs of Staff.

Joint Interrogation and Debriefing Center staff interview of Iraqi detainee at Camp Cropper, Baghdad

Professor Harvey Rishikof's fine article on institutional ethics in three distinct scenarios includes some troubling elements that bear additional scrutiny and analysis. Professor Rishikof capably addresses the interplay between law and ethics and the intersection of the respective roles of the President, Congress, and courts in drawing the line between lawful and unlawful conduct in prosecuting the war on terror and in evaluating the factors inherent in determining where that line should be drawn. He admits that the placement of that line may vary in different circumstances, and properly so.

Most international law practitioners would endorse the discussion in the first two sections of his article (addressing command responsibility under the Uniform Code of Military Justice, the principles underlying Protocol I [which lacks ratification], and the role of the judiciary reflected in the Israeli institutional court view). The discussion in the third section invites further review. This section addresses interrogation/prosecution issues and the need for greater congressional oversight of this process to ensure that the tenets of the Geneva Conventions are properly applied. Few could be disturbed by Congress exercising its authority over military operations through

control of defense appropriations and through other appropriate legislation. This prerogative was addressed in a recent article in *Joint Force Quarterly*.<sup>1</sup> Similarly, there is no disagreement with Professor Rishikof that the provisions of Common Article 3 of the convention, addressing noninternational armed conflict, apply.<sup>2</sup>

What is troubling is Professor Rishikof's view that protections beyond those within Common Article 3 (applicable to unlawful belligerents) of the Third Geneva Convention apply *as a matter of law* to the detainees at Guantanamo. For example, in advocating a legislative commission to "preclude any deviation from the Geneva Conventions again," as he

apparently believes occurred at Guantanamo, he asserts that “under the Geneva Conventions, only name, rank, age, and serial number are required.” No al Qaeda member is a lawful belligerent to whom these rules beyond Article 3 apply, and none has a rank or serial number recognized in law.

The war against the terrorists who attacked the United States on September 11, 2001, and their supporters does not represent traditional warfare between states adhering to the law of armed conflict. Rather, it reflects nontraditional violence against states and innocent civilians by individuals or groups for political ends without regard to the “civilized” behavior on the battlefield that underpins the four 1949 Geneva Conventions, including the Convention Relative to the Treatment of Prisoners of War (GC III).<sup>3</sup>



National Guard Bureau (Jim Greenhill)

**Senator John McCain supports prohibiting military personnel from engaging in harsh interrogation techniques**

Despite the fact that the Taliban and al Qaeda fighters being held at Guantanamo do not warrant prisoner of war (POW) treatment under GC III because they exhibited none of the criteria for lawful belligerent status under Article 4A of GC III (wearing uniforms or distinctive emblems, carrying arms openly, serving under a recognized command structure, and observing the laws of armed conflict), the Bush administration stated early on that those detained would enjoy humane treatment in confinement, although not the status of POWs.<sup>4</sup> The pertinent question is what this means in terms of access to the courts and interrogation of detainees.

The question of detainee access to U.S. District Courts was answered by the Supreme Court in *Boumediene v. Bush*,<sup>5</sup> decided June 12, 2008. The court in *Boumediene* reversed the Court of Appeals for the DC Circuit and held that aliens detained as enemy combat-

ants at the Naval Station at Guantanamo Bay, Cuba, were entitled to the right of habeas corpus to challenge the legality of their detention.<sup>6</sup> The court further held that the provision (Article 7) of the Military Commissions Act (MCA) denying Federal courts jurisdiction to hear habeas corpus suits that were pending at the time of its enactment amounted to an unconstitutional suspension of the writ to these individuals.<sup>7</sup> Furthermore, the Supreme Court found that the Suspension Clause<sup>8</sup> had full effect at the Naval Station at Guantanamo Bay,<sup>9</sup> that the detainees were entitled to prompt habeas corpus hearings,<sup>10</sup> and that they could not be required to exhaust other review procedures prior to filing their habeas petition.<sup>11</sup>

Separate from, but related to, the jurisdictional arguments of the detainees in the *Boumediene* case were their claims under the Suspension Clause of the Constitution. The Supreme Court had previously held in 2001 that the Suspension Clause protects the writ of habeas corpus “as it existed in 1789,” when the first Judiciary Act created the Federal court system and granted jurisdiction to those courts to issue writs of habeas corpus.<sup>12</sup> Before the DC Circuit in the *Boumediene*<sup>13</sup> appeal, however, appellants argued that in 1789, the privilege of the writ extended to aliens outside the sovereign’s territory.<sup>14</sup>

Unfortunately, in none of the cases cited by appellants in the Circuit Court were the aliens outside the territory of the sovereign.<sup>15</sup> More significantly, the historical antecedents in England upon which U.S. practice is based show that the writ was simply not available in any land not the sovereign territory of the Crown. Given the clear history of the writ in England prior to the founding of this country, habeas corpus would not have been available to aliens in the United States in 1789 without presence or property within its territory. This is borne out by the Supreme Court’s 1950 decision in *Johnson v. Eisentrager*,<sup>16</sup> where the court stated: “Nothing in the text of the Constitution extends such a right, nor does anything in our statutes.”<sup>17</sup> Similarly, the majority in the DC Circuit Court in *Boumediene* in 2007 observed: “We are aware of no case prior to 1789 going the detainees’ way, and we are convinced that the writ in 1789 would not have been available to aliens held at an overseas military base leased from a foreign government.”<sup>18</sup>

Notwithstanding this clear record, the 5–4 Supreme Court majority upended history on June 12, 2008.

The question of what constitutes improper interrogation, and Congress’ role in that determination, continues to be a vexing problem. As the Supreme Court recognized in 2004, the President’s constitutional authority to deploy military and intelligence capabilities to protect the interests of the United States in time of armed conflict necessarily includes authority to effect the capture, detention, *interrogation*, and, where appropriate, trial of enemy forces, as well as their transfer to other nations.<sup>19</sup> President Bill Clinton’s Justice Department further recognized in 1996 that Congress “may not unduly constrain or inhibit the President’s authority to make and to implement the decisions that he deems necessary or advisable for the successful conduct of military operations in the field.”<sup>20</sup>

Concurrently, Article I, section 8, of the Constitution grants significant war powers to Congress. Its power to “define and punish . . . offenses against the laws of nations”<sup>21</sup> provides a basis for Congress to establish a statutory framework, such as that set forth in the MCA

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*the Bush administration stated early on that those detained would enjoy humane treatment in confinement, although not the status of POWs*

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of 2006<sup>22</sup> for trying and punishing unlawful enemy combatants for violations of the law of war and other hostile acts in support of terrorism. This view was confirmed by President Bush’s support for enactment of the MCA following the Supreme Court’s decision in *Hamdan v. Rumsfeld*.<sup>23</sup> Furthermore, the power to “make rules for the government and regulation of the land and naval forces”<sup>24</sup> gives Congress the recognized authority to establish standards for detention, interrogation, and transfer to foreign nations. This is precisely what Congress did in passing the Detainee Treatment Act of 2005, which addresses the treatment of alien detainees held in the custody of the Department of Defense.<sup>25</sup>

While the Executive and Congress share responsibility for detainee matters, the detention of unlawful combatants rests solely with the former. Early in the present conflict, Congress passed Senate Joint Resolution (SJR) 23,<sup>26</sup> which recognizes that “the President has authority under the Constitution to take action to deter and prevent acts of international ter-



rorism against the United States.”<sup>27</sup> Additionally, the resolution specifically authorizes “the President . . . to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist acts that occurred on September 11, 2001, or harbored such organizations or persons, *in order to prevent any future acts of international terrorism against the United States* by such nations, organizations, or persons.”<sup>28</sup> Thus, Congress in SJR 23 has specifically endorsed not only the use of appropriate military force, but also the included authority to detain enemy combatants to prevent them from conducting further hostilities against the Nation. Effective interrogation of those with knowledge of terrorist planning is directly related to preventing future terrorist acts.

These views were distilled most succinctly by then-Congressman (later Judge) Abe Mikva in 1971 when addressing the effect on the President’s power of the repeal of the 1950 Emergency Detention Act. Representative Mikva stated:

*After all, if the President’s war powers are inherent, he must have the right to exercise them without regard to congressional action. Arguably, any statute which impeded his ability to preserve and protect the republic from imminent harm could be suspended from operation. It is a contradiction in terms to talk of Congress’ limiting or undercutting an inherent power given by the Constitution or some higher authority.*<sup>29</sup>

Relating this to the harsh interrogation used by intelligence agency professionals against Khalid Sheikh Mohammed, significant intelligence was secured that has saved American lives. While Professor Rishikof does not rule out harsh interrogation measures where extreme necessity may exist, we are left searching for guidance on what constitutes the line between lawful and unlawful interrogation and how Mikva’s “imminent harm” or Rishikof’s “extreme necessity” is to be measured.

The answer may come from the new Commander in Chief himself. When President Barack Obama was campaigning for office, he was sharply critical of President Bush’s acceptance of practices involving enemy operatives and detainees in foreign locations deemed necessary to secure information and keep the Nation free from subsequent attack. These practices included warrantless wiretaps,

enhanced interrogation, and detention without trial (as provided at that time by *Johnson*). Upon his election, however, President Obama has moderated these statements and has opined, most recently on ABC’s *This Week*, that “we shouldn’t be making judgments based upon . . . incomplete information or campaign rhetoric.” As cautious a leader as President Obama apparently is, he will likely be reluctant to throw away the entirety of the intelligence architecture that has kept the United States safe for the past 7-plus years.

In late 2005, the Senate passed an amendment sponsored by Senator John McCain to the Defense Authorization Bill that now regulates the interrogation of detainees held by U.S. military forces. The amendment severely restricts harsh interrogation practices and prohibits “cruel, inhumane and degrading” treatment of detainees (torture has long been prohibited by both domestic and international law). Senator McCain has subsequently indicated he does not rule out harsh treatment in an emergency such as a hostage rescue or an imminent attack.<sup>30</sup>

To obtain the best possible balance between the obligations of both national security and human rights, three fundamental steps must now be taken to more carefully define this process. The first, as suggested by Charles Krauthammer,<sup>31</sup> John McCain, and others, would prohibit military personnel from ever engaging in the harsh techniques addressed by the McCain amendment and would require that, when they are authorized under limited and discrete circumstances, their application be restricted to nonmilitary intelligence professionals. The second is that the rationale be carefully circumscribed to only imminent danger situations, as suggested by Senator McCain. The third, given voice by President Obama himself in early March 2009, would require prior written authority from a review body modeled on the Foreign Intelligence Surveillance Court, which conducts a similar balancing of interests in the surveillance area. With these procedures in place, the respective institutional roles would be honored, and the process of drawing a line between the unlawful and the legally justified would satisfy both theorist and practitioner. **JFQ**

## NOTES

<sup>1</sup> See James P. Terry, “The Use of Military Force by the President: Defensive Uses Short of War,” *Joint Force Quarterly* 50 (3<sup>d</sup> Quarter 2008), 113–120, available at <[www.ndu.edu/inss/Press/jfq\\_pages/editions/i50/25.pdf](http://www.ndu.edu/inss/Press/jfq_pages/editions/i50/25.pdf)>.

<sup>2</sup> Article 3 of each of the four 1949 Geneva Conventions creates a “mini convention” providing certain minimum humanitarian protections in non-international armed conflict.

<sup>3</sup> Convention Relative to the Treatment of Prisoners of War, August 12, 1949, 6 U.S.T. 3316, T.I.A.S. No. 3364.

<sup>4</sup> See February 7, 2002, press briefing by Press Secretary Ari Fleisher at the White House. The President’s Military Order of November 13, 2001, like the Secretary of Defense’s Military Commission Order No. 1 of March 21, 2002, was designed to ensure that individuals subject thereto received a full and fair trial.

<sup>5</sup> *Boumediene v. Bush*, 128 S. Ct. 2229 (2008).

<sup>6</sup> *Ibid.*, 2234.

<sup>7</sup> *Ibid.*, 2234–2235.

<sup>8</sup> The Suspension Clause in Art. I, sec. 9, cl. 2, directs that the “Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.”

<sup>9</sup> *Ibid.*, 2235, 2276.

<sup>10</sup> *Ibid.*, 2237.

<sup>11</sup> *Ibid.*, 2275.

<sup>12</sup> See *INS v. St. Cyr*, 533 U.S. 289, at 301 (2001).

<sup>13</sup> *Boumediene v. Bush*, 476 F.3d 981, at 988 (2007).

<sup>14</sup> At *Boumediene v. Bush*, 988, the appellants cited three cases for this proposition: *Lockington’s Case*, Bright. (N.P.) 269 (Pa. 1813); *The Case of Three Spanish Sailors*, 96 Eng. Rep. 775 (C.P. 1779); and *Rex v. Schiever*, 97 Eng. Rep. 551 (K.B. 1759).

<sup>15</sup> *Ibid.*

<sup>16</sup> *Johnson v. Eisentrager*, 339 U.S. 763, 768 (1950).

<sup>17</sup> *Ibid.*

<sup>18</sup> *Boumediene v. Bush*, 990–991.

<sup>19</sup> Compare, for example, *Hamdi v. Rumsfeld*, 542 U.S. 507, 518 (2004) (plurality) (describing important incidents of war).

<sup>20</sup> See, for example, *Placing of United States Armed Forces Under United Nations Operational or Tactical Control*, 20 Op. O.L.C. 182, 185 (1996).

<sup>21</sup> Art. I, sect. 8, cl. 10, U.S. Constitution.

<sup>22</sup> Pub. L. No. 109–366, 120 Stat. 2600 (2006).

The President signed the Military Commissions Act into law on October 17, 2006.

<sup>23</sup> 548 U.S. 557 (2006).

<sup>24</sup> Art. I, sect. 8, cl. 14, U.S. Constitution.

<sup>25</sup> Pub. L. No. 109–148, 119 Stat. 2680 (2005), signed into law December 30, 2005.

<sup>26</sup> Authorization for Use of Military Force, Pub. L. No. 107–40, 115 Stat. 224 (2001).

<sup>27</sup> *Ibid.*, preamble.

<sup>28</sup> *Ibid.*, sect 2(a).

<sup>29</sup> 117 Cong. Rec. 31557 (1971).

<sup>30</sup> See Cathy Young, “Torturing Logic,” March 2006, available at <[www.reason.com/news/show/33263.html](http://www.reason.com/news/show/33263.html)>.

<sup>31</sup> See Charles Krauthammer, “The Truth about Torture,” *Weekly Standard*, December 5, 2005.



U.S. Army (Adam Mancini)

# AFGHANISTAN

## The Path to Victory

By JOSEPH J. COLLINS

**T**he focal point of the war on terror has shifted from Baghdad to Kabul, from Mesopotamia to the Hindu Kush. It is in

U.S. national interest to pursue a balanced counterinsurgency and state-building policy in Afghanistan. This policy—neither cheap nor quick—should be focused on the defeat of hardcore Taliban and its associated movements, which include al Qaeda, and the simultaneous creation of a capable and effective state in Afghanistan. There are no quick-fix or silver-bullet solutions to the problem. To accomplish this policy, we will have to pick up

the pace and creativity of our efforts. We—the United States and its coalition partners—must do this with all deliberate speed and in close coordination with our efforts to support Pakistan.

The urgency of strategic reform stems from one key fact of life: we are in serious (but not grave) trouble in Afghanistan. Violence is up, and despite a doubling of U.S. forces and the recreation of the Afghan National Army (ANA) and Afghan National Police (ANP), security incidents have increased more than tenfold since 2004. Last year, a provincial capital was attacked, and rumors of Taliban

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shadow governments in many provinces abound. President Hamid Karzai's approval rating has slipped—by the most favorable estimates to around 50 percent. Inefficiency and corruption are rampant. Urged on by reports of collateral damage and civilian casualties, Afghans who rate U.S. performance as “good” or better have slipped to only a third of the population.<sup>1</sup> Only their barbarity, poor performance, and limited repertoire have kept the Taliban from greater successes. While they have steadfastly believed that time is on their side, they still can only win if the coalition quits.

It is no wonder that the Obama administration and U.S. Central Command have conducted strategic reassessments. Many people, however, are still asking how this conflict will end, and others wonder whether it is worth the effort. In the eighth year of this conflict, other experts remember that General George Marshall warned during World War II that “a democracy cannot fight a Seven Years War.”<sup>2</sup> Another group points to our massive national debt and wonders whether we can afford to throw good money after bad.

Pundits and professors have searched diligently for silver-bullet solutions. Some suggest that we should just focus on what is important for us, counterterrorism, and not worry about state-building. In the world of academic theory, this might be possible—but in reality, counterinsurgency, counterterrorism, reconstruction, stabilization, and state-building in Afghanistan are all strands in the same rope. In the end, if we do not help to create a stable, decent Afghan state, our counterterrorism efforts will be required there perpetually. Why should Afghanistan—30 years at war and one of the five poorest nations on Earth—accept the risks and costs of being our ally in this war and expect nothing in return? If we cannot offer the Afghans a better life, what is the difference between us and the Taliban?

Other experts suggest that, since Afghanistan has never had a functioning central government, we should stop trying to build one and work all of our priorities through local and tribal officials, bypassing the sclerotic government in Kabul. Henry Kissinger has even noted that “attempts to establish centralized Afghan control have rarely succeeded and then not for long.”<sup>3</sup> This pessimistic conclusion clouds Afghan history. For generations, there was a central government in Kabul that, along with provincial,

local, and tribal entities, created law and order and did the business of the country. Marin Strmecki, a longstanding expert in regional affairs, told the Senate Armed Services Committee:

*until the late 1970s, Afghanistan [was] a relatively stable developing country for most of the twentieth century. It was a poor country, to be sure, but one with a state that carried out basic governmental functions and that enabled gradual political and economic progress.*<sup>4</sup>

In a similar vein, some believe that we should work more closely with border tribes, forming militia or auxiliary units akin to the Sons of Iraq who figured prominently in the surge in that country. Indeed, there are some safe ways of using tribal formations, but without tight control and central direction, we could end up encouraging warlordism or violent local rivalries. In any of these schemes, balancing central government and local prerogatives should be an important priority for Afghan government officials.

Reconciliation may well be another false hope. While encouraging the defection of Taliban members is fine (and ongoing), the notion that the Taliban could form a political party within Afghanistan's democratic

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*for generations, there was a central government in Kabul that, along with provincial, local, and tribal entities, created law and order and did the business of the country*

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framework is as far-fetched as thinking that there could be an autonomous “Talibanistan” inside the current Afghan state. Not only is the Taliban leadership not eager to negotiate while they are doing well, but there are also other obstacles to reconciliation:

*When the Taliban ruled, it conducted numerous crimes against humanity for which there has never been an accounting. In addition to the extreme repression of its citizenry—no kites, no music, no female education, executions at soccer matches, etc.—thousands of non-Pashtun Afghans were killed for sport by the Taliban. Anyone wanting to reconcile with the Taliban will also have to figure out how*

*to deal with the guys who have been planting [improvised explosive devices], kidnapping civilians . . . destroying reconstruction projects in the countryside . . . burning girls' schools, and cutting off the heads of non-combatants. . . . While [President] Karzai may see some of the Taliban as wayward brothers, his non-Pashtun allies do not.*<sup>5</sup>

There are no viable alternatives to a full-bodied counterinsurgency and state-building approach in Afghanistan. There is no substitute for defeating the Taliban as a military threat and subsequently preparing the Afghan state to deal independently with its own security and economic problems. To take a halfway measure or to quit now on the Afghans would ultimately invite the re-Talibanization of Afghanistan and the reestablishment of the al Qaeda sanctuary. As warm a base area for terrorism as Pakistan has become, it does not compare in any dimension to the freedom and facilities present in pre-9/11 Afghanistan. As Secretary of Defense Robert Gates reminded us: “To fail—or to be seen to fail—in either Iraq or Afghanistan would be a disastrous blow to U.S. credibility, both among friends and allies, and among potential adversaries.”<sup>6</sup> While the concept of victory in irregular wars is often ambiguous and unsatisfying, General Douglas MacArthur's statement is valid in this case. In Afghanistan, “there is no substitute for victory.”

### What Went Wrong?

To find the path to victory, one must first review how this “good war” went bad. Since 2004, the Taliban has clearly done more to regain its lost status than the coalition has done to advance its objectives. Among the strengths possessed by the Taliban are a few thousand dedicated cadres, excellent funding from the drug trade and Persian Gulf charities, and the luxury of an unimpeded sanctuary in a neighboring country. Hampering the combat endeavor are the half-hearted efforts of most North Atlantic Treaty Organization (NATO) nations and the complex decision mechanisms associated with the International Security Assistance Force (ISAF).

NATO, meant to be a solution, has become a *big part* of the security problem. The standing of the Alliance in Afghanistan could not be lower. Ponderous, flat-footed, and rank-heavy, the NATO command has been a grave disappointment, with even



our smallest Allies taking their daily cues (and numerous caveats) from their capitals. Although NATO voluntarily took over the nationwide military mission in 2006, most of the continental powers—Germany, Italy, and Spain, for example—have refused to engage in combat under any circumstances. Our Allies—except the British, Canadians, Dutch, and a few others—have been a total disappointment. They not only fight ineffectively, but also their risk aversion has caused them on occasion to impede the operational effectiveness of other police and military forces.<sup>7</sup> They are also not carrying their share of the development assistance burden. To say the least, Afghan officials are very disappointed with European military and financial support.

The United States and its coalition partners have done an inadequate job in developing the Afghan security forces.

The major mistake made by the coalition has been the failure to build Afghan capacity for governance, rule of law, and security. Even in the military and police areas, we have provided services more than we have

*the United States and its coalition partners have done an inadequate job in developing the Afghan security forces*

enabled the Afghans to do for themselves. While our tactical units are at full complement, our advisory efforts are hampered by numerical and quality shortfalls. U.S. tactical units are well trained and cohesive, but our advisory elements are pickup teams, which often lack effective preparation for their complex duties. In all, the advisory effort is

Afghan cabinet minister, 80 percent of all aid flowing into Afghanistan totally bypasses the Kabul leadership.<sup>8</sup> The government's capacity to act on its own has not developed, and in rare cases, such as the National Solidarity Project—which features the government, local citizens' councils, and NGOs working together—the people do not interact with the central government at all. Provincial and district governments are clearly underdeveloped. In all, while many important projects have been successfully executed, state capacity remains low, and the private sector suffers from a lack of security and weak national and provincial governance. The rule of law is erratic in many areas outside the major cities. The areas with the least security have received the least amount of aid.

### What Is to Be Done?

Having assessed our failures, we should next refine our strategy. Our goal in Afghanistan—the ultimate metric of victory—should be a decent, legitimate, and representative country, at peace with itself and its neighbors, and able to handle its own internal and external threats. It should be a reliable enemy against al Qaeda and other extremist movements. The Afghan state should be a blend of central and local/tribal power in proportions that Afghans find acceptable. Again, bypassing the center to work directly with local authorities is a nonstarter.

The first mechanism to help to bring about such a state is a counterinsurgency strategy that works to clear, hold, and build. Job One is to protect the population, secure the nationwide elections, and strike devastating blows against the Afghan Taliban wherever they are. At the same time, there must be a state-building process that addresses governance, economic development, rule of law, and the repair or replacement of basic infrastructure. In all things, the development of Afghan capacity must be given the highest priority, even at the expense of efficiency. At the same time, U.S. officials need to hold the Afghan government accountable and push it to eliminate corruption.

All efforts in Afghanistan must be mirrored in our policy toward Pakistan. Islamabad, too, needs aid. At the same time, Pakistan must end its links to the Taliban and begin to combat the Afghan Taliban resident on its soil, as it has begun to fight the Pakistani Taliban that threatens its emerging



Providing jobs for Afghan workers and promoting economic progress are critical to achieving lasting success in Afghanistan

While the ANA has come a long way and has reached its original target strength, it is light on logistics, communications, and transportation. The ANP is clearly inadequate in numbers and professionalism. Complicating the security situation is the fact that Afghanistan has become the number one opium-producing nation in the world. Efforts to control narcotics—a major source of government corruption and Taliban financing—have been ineffective to date.

essential to success in Afghanistan, but it is a distant second priority behind the provision of tactical units. As the ANA and ANP are expanded, our shortfalls in the quantity and quality of advisors will become even more critical.

In economic areas, nongovernmental organizations (NGOs) and international organizations have found it necessary (or convenient) to go around the weak Afghan government, and today, according to an

democracy. Pakistan's leaders should help us fight "our" Taliban, and we should help them fight theirs.

Since much of Pakistan's attitude toward Afghanistan reflects its threat perceptions concerning India, it is incumbent on the United States to work to lower Indo-Pakistani tensions. Confidence can be built through discussions, and through both sides showing more transparency vis-à-vis their policies in and toward Afghanistan. Ironically, India does not want to engage in such talks. In a similar vein, a strategic dialogue with Iran could be a vehicle for reminding Iranians how much they hated the original Taliban and why they need to cooperate once again with the government of Afghanistan against a common enemy. Secretary of State Hillary Clinton has invited Iran to dialogue on Afghanistan, and Tehran would benefit greatly.

On the security front inside Afghanistan, major changes must be made. First, there needs to be a major reinforcement of coalition forces and growth in the ANA. Second, we should concentrate on giving the army the enablers—fire support, helicopters, and logistics—that it needs to become more independent and expeditionary. The ANA should also be charged to arm and supervise local tribal guardsmen, who can serve as force multipliers. Over time, *advising and mentoring* the ANA—not *fighting*—should become the most important task of coalition forces.

Third, to streamline the chain of command, the clock should be turned back. While the ISAF commander remains in overall command, NATO ISAF should directly control the areas in the north and west, where peace-keeping and stability operations are the rule. An Autonomous Combat Command (ACC), a coalition of the willing with a separate war-fighting headquarters, would conduct counterinsurgency and stability operations in the east and south. NATO and ACC units would be responsible for mentoring local ANA units in their respective areas of responsibility. A separate training and advisory command—again, a coalition of the willing—would support advisory efforts in both areas of responsibility and would manage security assistance to the ANA and ANP.<sup>9</sup>

Fourth, good counternarcotics operations will make for good counterinsurgency effects. Coalition military units should begin to gather intelligence in order to target drug lords, warehouses, and laboratories. The

coalition should leave retail "poppy whacking" to the counternarcotics police.

Fifth, the government, coalition, and international community, including NGOs and major businesses, should establish a national coordination center in Kabul to plan and manage counterinsurgency, aid, and state-building activities. This center would have an operational level for planning and execution on various lines of operations, as well as a senior executive level that would meet monthly. Afghan government representatives should chair each of the multiple forums. Iran, Pakistan, and other regional states could maintain liaison officers at both levels. This center would bring all relevant actors to the table on security, governance, and economic development.

Finally, long-range planners in the coordination center should begin transition planning. In each line of operation, they should define an endstate and a work plan to put Afghans in charge of their own country. One area ripe for participation is the Provincial Reconstruction Teams, which should ultimately become Afghan-led and coalition-supported.

We are not doing well in Afghanistan, but we could be back on a path to victory by the end of 2010. For our own security, we should stick to our commitments and pick up the pace of our efforts, fighting harder against the Taliban and working harder to help build a legitimate Afghan state. In the end, the most essential thing the coalition can do is to develop Afghanistan's capacity to secure its

own country and to run its own affairs. We can help, but in the end, only Afghans can achieve victory. **JFQ**

## NOTES

<sup>1</sup> ABC News/BBC/ARD Poll, "Afghanistan: Where Things Stand," December 2008, available at <<http://abcnews.go.com/PollingUnit/story?id=6787686&page=1>>.

<sup>2</sup> See discussion in Russell Weigley, *The American Way of War: A History of United States Military Strategy and Policy* (Bloomington: Indiana University Press, 1977), 5.

<sup>3</sup> Henry A. Kissinger, "A Strategy for Afghanistan," *The Washington Post*, February 26, 2009, A19.

<sup>4</sup> Unpublished testimony of Marin Strmecki before the Senate Armed Services Committee, February 26, 2009.

<sup>5</sup> Joseph J. Collins, "To Further Afghan Reconciliation: Fight Harder," *Small Wars Journal*, October 31, 2008, available at <<http://smallwarsjournal.com/blog/2008/10/to-further-afghan-reconciliation/>>.

<sup>6</sup> Robert M. Gates, "A Balanced Strategy: Reprogramming the Pentagon for a New Age," *Foreign Affairs* 88, no. 1 (January-February 2009), 28.

<sup>7</sup> Author's private discussions with three senior Afghan national security officials, one in 2008 and two others in 2009, in Washington, DC.

<sup>8</sup> Presentation by a senior Afghan official in Washington, DC, in the winter of 2009.

<sup>9</sup> A fuller treatment on how to revise command and control in Afghanistan can be found in the unpublished testimony of Lieutenant General David Barno, USA (Ret.), before the Senate Armed Services Committee, February 26, 2009.

**Navy engineer surveys elevation of dirt added to landing strip expansion project, Helmand Province**



U.S. Navy (Patrick W. Mullen III)



# Destroy the Taliban's Sanctuary

By STEVEN METZ

America's new strategy in Afghanistan seeks to replicate the success of Iraq. The idea is that an increase in the number of troops, more nonmilitary advisors, and expanded aid will strengthen the Afghan national government and secure the local people, thus filling the power vacuum that the Taliban exploits. This plan has two major flaws.

The first is the absence of a viable economy outside of opium production. Iraq had oil, some industry, and a once-vibrant agricultural sector. Afghanistan has little beyond subsistence farming. But more importantly, Afghanistan faces what may be the single most important determinant of insurgent success or failure: external sanctuary for the rebels.

Over the last century, only a handful of insurgents succeeded without external sanctuary. China, for instance, was so large that Mao's communist insurgents were able to create and control internal sanctuary. In Cuba, the Batista regime was so weak that

Castro could topple it without the benefit of external bases. But in most instances of insurgent victory—Vietnam, South Africa, Zimbabwe, Uganda, and so forth—sanctuary was vital. In Greece in the 1940s and, more recently, Iraq, eradicating external sanctuary helped strangle the insurgency. History suggests that to defeat the Taliban, its sanctuary must be destroyed.

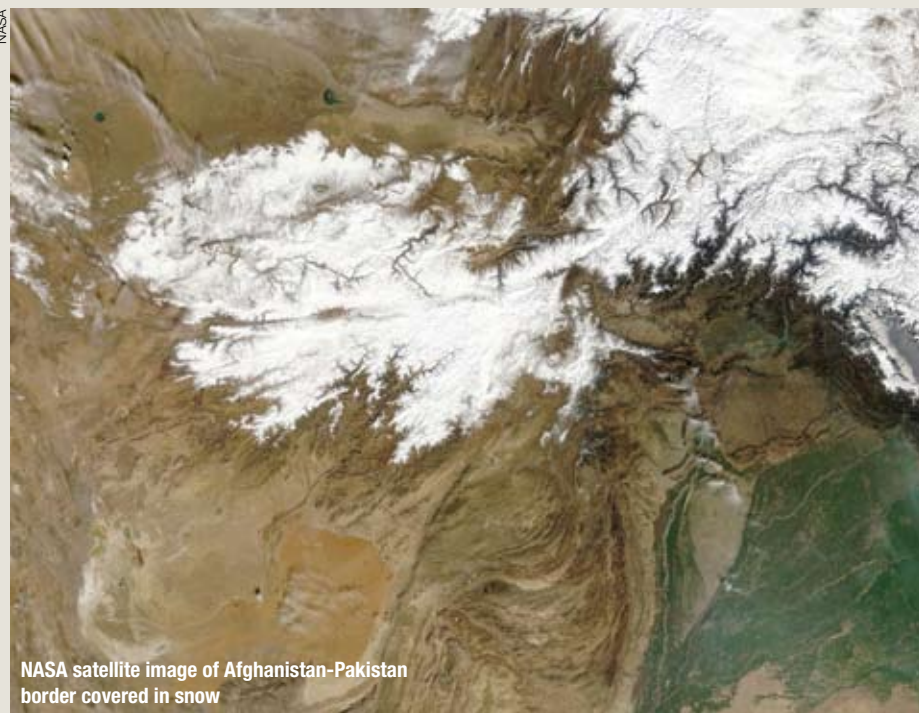
The problem is that America's ally Pakistan is unwilling or unable to do so. This goes beyond a simple lack of capacity—it is a *deliberate* policy. Recent reports claim that elements of Pakistan's Directorate for Inter-Services Intelligence directly support the Taliban, apparently hoping to appease militants or prevent the emergence of a stable Afghan government. As in Vietnam, political considerations have prevented the United States from destroying the Taliban's external sanctuary. The fear is that either cleaning out the sanctuary directly or pressuring Pakistan to do so might precipitate the collapse of the Islamabad government. As a poor substitute,

the policy of the United States is to target identifiable Taliban leaders in the Pakistan sanctuary and play defense on the Afghan side of the border. There is little evidence that this will defeat the insurgency. It failed when the United States tried it in Vietnam, when the white minority government of South Africa tried it, when the Israelis tried it against Palestinian militants, and when the Russians did it in the Caucasus. Nothing suggests that history has shifted so that the defend-and-assassinate approach is now viable.

This leaves three options. If eradicating the sanctuaries would, in fact, lead to the downfall of the Pakistani regime and if its survival is more important than stabilizing Afghanistan, Washington could continue the current policy, either pouring in additional blood and money for many years or relegating Afghanistan to the Taliban. If stabilizing Afghanistan and lowering the American burden there is the priority, then the United States must give the Pakistani government a choice. It can either eradicate the Taliban sanctuaries within its territory or the Afghan government can have the United Nations declare the sanctuary a threat to regional peace and security, then ask the United States to deal with it.

There is no doubt that such actions would challenge, and perhaps even threaten, the Pakistani government. But Islamabad cannot be both America's friend and enemy at the same time. Our Afghan ally is at great risk because of Pakistan's inaction. American military forces are killed by insurgents operating from their sanctuary in Pakistan.

Perhaps the best solution is disengagement from this embattled part of the world. But if the United States elects to sustain its commitment to peace and stability in Afghanistan, the insurgent sanctuary must be destroyed. **JFQ**



NASA satellite image of Afghanistan-Pakistan border covered in snow

Dr. Steven Metz is a Professor in the Strategic Studies Institute at the U.S. Army War College.



DOD (Adam Mancini)

Soldier signals to his team during patrol near Forward Operating Base Lane, Afghanistan

# Trapping Ourselves in Afghanistan and Losing Focus on the Essential Mission

By RALPH PETERS

**A** *fghanistan doesn't matter.* Afghanistan's just a worthless piece of dirt. Al Qaeda matters. To a lesser degree, the hardline elements within the Taliban matter. Pakistan matters, although there is nothing we can do to arrest its self-wrought decay. But our grand ambition to build an ideal Afghanistan dilutes our efforts to strike our mortal enemies, mires our forces in a vain *mission civilatrice*, and leaves our troops hostage to the whims of venomous regimes.

Afghanistan is the strategic booby prize. Even a perfect success in Kabul (which we shall not achieve) influences nothing beyond the country's largely imaginary borders. No other state looks to Afghanistan—a historical black hole—as an example. Political partisan-

ship blinded many Americans to the importance of Iraq in our effort to get at the roots of terror. Addressing topical symptoms rather than deep causes, we decided that Afghanistan was vital because our enemies, al Qaeda's lethal gypsies, had based themselves there when they wore out their welcome elsewhere. The more important issue was the "why?" behind al Qaeda. That *why* leads to the Arab Middle East, not Afghanistan, and the emotional heart of the Arab world lies in Baghdad. While Saddam Hussein's Iraq was not a safe haven for al Qaeda, its archetypal problems formed the foundation for Islamist terror: the comprehensive failure of Arab attempts at political modernity, resulting in the estrangement of frustrated individuals who turned to stern Islam as an alternative to secular

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strong-men and preyed-upon societies. Positive changes in Iraq, however imperfect, will resonate throughout the Middle East (if not as swiftly as the neoconservatives hoped). Progress in Afghanistan is a strategic dead end.

Even the assumption that, if we do not “fix” it to Western specifications, Afghanistan will become a terrorist base again misreads the past. Afghanistan became a terrorist haven because we refused to attack the terrorists we knew were there. Osama bin Laden could have been killed. Al Qaeda training camps could have been destroyed. The Taliban could have been punished. Instead, the Clinton administration simply hoped the threat would fade away. Our problem was

fecklessness, not the neomedieval lifestyle of villagers in remote valleys. We have embraced a challenge of marginal relevance, forgetting that al Qaeda was a parasite on the Afghan body and choosing to address an Arab-fathered crisis by teaching our values to illiterate tribesmen who do not speak Arabic.

Even if we could persuade Afghan villagers that our values and behaviors are superior, if we could reduce state corruption to a manageable level, if we built thousands of miles of roads, eliminated opium growing, and persuaded Afghans that women are fully human, it would have no effect on al Qaeda. The terrorists who attacked our homeland were not Afghans. Afghanistan was just a

cheap motel that was not particular about asking for identification. Even a return to power of the Taliban—certainly undesirable in human-rights terms—does not mean that September 11, Part Two, then becomes inevitable. The next terror attack on the West will not be launched from Afghanistan.

Pause to consider how lockstep what passes for analysis in Washington has become. The Taliban’s asymmetric strategy is not to defeat us militarily, but to make Afghanistan ungovernable. But what if our strategy, instead of seeking to transform the country into a model state, were simply to make it ungovernable for the Taliban? Our chances of success would soar while our costs would

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plummet. But such a commonsense approach is unthinkable. We think in terms of Westphalian states even where none exist.

We buy into so many unjustified-but-comfortable assumptions that it is bewildering. There is no law, neither our own nor among international statutes, that commands us to rescue every region whence attacks against us originate. Our impulse to lavish aid on former enemies was already a joke in the 1950s. By the 1960s, our “send money” impulse had grown so wanton that it began to destroy allies. In Vietnam, our largesse corrupted our local partners. For their part, the North Vietnamese enjoyed the strength of their poverty: As South Vietnamese officials and officers grabbed everything they could, North Vietnam concentrated on grabbing South Vietnam. Today, we are repeating that strategic decadence, deluging an ethically inept government with so much aid that we only anger the frustrated population while enriching those in power. And, of course, we hardly give a thought to what the Afghan people truly want or do not want.

Nor are we willing to recognize that the Taliban, or something like it, will always exist in those forbidding valleys. Unlike al Qaeda in Iraq, the Taliban is an indigenous movement (its rise accelerated by aid from Pakistan’s Inter-Services Intelligence). The hold of religion—and the paralyzing social customs upon which



GEN McKiernan speaks to members of Afghan Public Protection Force, a new community-level force that guards schools, mosques, and roads to free police for other missions

faith insists—is powerful beyond our ken. We wish it away, pointing out the corruption among mullahs or the hypocrisy of believers willing to stone women to death for human foibles while enjoying the forbidden delights of pederasty themselves. But if hypocrisy negated the power of religion, there would be no religion anywhere. The human mind grows supple when self-interest and power come into play—even the mind chock full of religious doctrine. *Do as I say, not as I do* is an appropriate motto for faiths of all complexions—but that does not make religion any less potent. A “holy man” can rationalize personal monkey business in any number of ways but still believe implacably in the destiny of his faith. The Taliban’s rank and file are not draftees, after all. Yes, social pressures exist, and, for some, fighting is a job (and not an unwelcome one). But subtract religion from the equation and we have no Taliban (or al Qaeda).

A modern state as we wish to see it rise cannot coexist with Afghanistan’s traditional values. The distance between Afghanistan and Iraq is not 1,200 miles, but 1,200 years—give or take a few modern weapons.

This circles back to the prime thesis of this article: even if everything broke our way in Afghanistan, so what? Afghanistan is a sideshow to its eastern neighbor, Pakistan, and to its western neighbor, Iran. We are renovating, at great cost, the outhouse between two blazing strategic mansions.

When Washington dramatically increases aid to a troubled country—as we are doing with Pakistan—we might as well put the death notice on the international obituary page. Pakistan, which has well over five times Afghanistan’s population and a nuclear arsenal, cannot be rescued by American efforts. Why? Because Pakistan does not *want* to be rescued. A succession of demagogues (including the late Benazir Bhutto) turned the country into an anti-American bastion by blaming Washington for every jot of suffering in Sindh and each increase in poverty in the Punjab. Pakistan cannot serve up its favored elements within the Taliban (although the military is willing to take on other elements of that complex network of fundamentalist organizations). Ever obsessed with India, Pakistan views Afghanistan as providing strategic depth and sees “its” Taliban as a useful auxiliary force. Now, having underestimated the power and will of Islamists, Pakistan’s government and military watch helplessly as

terror groups gnaw into the country’s vitals. Pakistan is the new ground zero of terror.

And it is our lifeline.

### Criminal Irresponsibility

Even if Afghanistan were important to our security, we would still be foolish to deploy ever more troops in the nebulous hope that things will somehow break our way. We have reached—indeed, passed—a point where our military’s can-do attitude and our government’s nice-to-do impulses have put our troops in the worst position they have faced since the autumn of 1950 in Korea, if not since December 1941 in the Philippines.

While I recognize that, given the time and resources, our troops can defeat (although not destroy) the Taliban and keep a Kabul government in office indefinitely, the problem is not the quality or even the quantity of our Armed Forces, but the vagueness and relative pointlessness of the tasks assigned: our men and women in uniform will do what they are asked and do it well, but decisionmakers should ask them to do sensible, useful things.

As I write, we are sending 21,000 additional American troops to Afghanistan, with the prospect that more will follow. It is appalling—and a gross dereliction of duty—that no senior officers have spoken out against the violation of fundamental military principles involved in this troop increase.

In order to roll more Afghan rocks uphill, we are ignoring the *essential* requirement to secure supply lines adequate to the mission. Even if Afghanistan were worth an

Karachi northward through the Khyber Pass to various parts of Afghanistan. We have put ourselves at the mercy of a corrupt government of dubious stability with an agenda discordant with ours. Strategically, our troops are Pakistan’s hostages.

And Islamabad already has taken advantage of our foolishness. While milking us for all the military and economic aid it can extract, Pakistan’s security services recently demonstrated just how reliant we are on their good will. In the wake of the Mumbai bombings—sponsored by a terror organization tacitly supported by Pakistan’s government—attacks on our convoys transiting the Khyber Pass, as well as raids on supply yards in Peshawar, swelled in number and soared in their success rate. This could not have occurred had the Pakistanis not given the green light to the attacks. Pakistan was strong-arming us into getting an angry India under control. And we did.

Serious strategy requires balancing potential rewards with inherent risks. Above all, it demands a clear recognition of what is doable and what is not, as well as the ability to differentiate between what is merely nice to do and what is essential. A strategic goal may be desirable in itself but not worth the probable cost. To put 50,000 or more U.S. troops at risk demands a no-nonsense analysis of the dangers weighted against the potential strategic return. That analysis has not been done. We are arguing over tactics and thinking, at most, in terms of operations, while missing the critical strategic context.

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increased effort, the lack of reliable, redundant lines of communication to support our forces would argue against piling on. In the wake of 9/11, it was vital to send special operations forces and limited conventional elements to Afghanistan to *punish* al Qaeda and its hosts despite the risks. Indeed, we might usefully have sent more Soldiers in those early months. But instead of striking hard, shattering our enemies, then withdrawing—the one military approach that historically worked in Afghanistan—we put down roots, allowing ourselves to become reliant upon a tortuous 1,500-mile lifeline from the Pakistani port of

Meanwhile, the belated awareness that our troops are de facto prisoners of war to Pakistan has led to the even greater folly of contemplating a 4,000-mile supply line from the Baltic Sea through Russia and various Central Asian states to provide nonlethal goods to our troops and those of the North Atlantic Treaty Organization (NATO). Even though the evidence is irrefutable that Moscow bribed Kyrgyzstan to deny our continued access to Manas Air Base—a critical support node—elements within the U.S. administration actually argue that, in the interests of “resetting” our relationship with



Russia, it is essential to “expose” ourselves to risk to show the Russians that we trust them. These are serious arguments made by American officials. One suspects they do not have children serving in our military.

Few strategic calculations are more obvious than Prime Minister Vladimir Putin’s ploy to addict us to a Russian-controlled supply line. With a domestic economic crisis on his hands (during which he still managed to promise Kyrgyzstan \$2.5 billion to close Manas to us), he senses that he will need to create foreign diversions and that the time is right to back an electoral *putsch* in Ukraine and to force regime change in Georgia. Putin calculates that we would accept these moves (protesting vigorously and briefly) in order to keep the supply line open. We are walking into *this* trap with our eyes willfully shut to the obvious peril.

Other voices have suggested bargaining for an ambitious supply route across China into the Afghan panhandle, crossing some of the roughest country on Earth. There are even whispers about opening a line of communication through Iran, an exemplary case of leaping out of the frying pan into the fire.

The logistics problem should have shaped our strategy in Afghanistan. After the late spring of 2002—when we had done what

*needed* doing in Afghanistan—our further goals and the means allocated to achieve them should have been determined by one ironclad criterion: What size force could be deployed, sustained, and, if need be, evacuated *in its entirety* by airlift? One vehicle beyond that calculation is one vehicle too many.

Even beyond the logistics debacle, we lack an integrated strategy, either specific to Afghanistan or regional. We have picked the wrong country to “save.” We are sending more troops, without clearly defining the endstate they are to achieve (echoes of Vietnam there). And the problem is where we *are not*—in Pakistan and, to an even greater extent, on the Arabian Peninsula. Indeed, there are serious opportunity costs worldwide, including in our own hemisphere, that are bewilderingly absent from the national debate—to the extent Washington allows a serious debate.

Yes, we *can* make Afghanistan a better place, for us and for the Afghans, if we are willing to remain for a full generation while immobilizing a substantial slice of our

battle-worn Armed Forces (it is astonishing that, as Mexico degenerates under the impact of a savage narco-insurgency, our military officers are agonizing over the moods of toothless village elders on the other side of the world; the crisis is on our border here and now, and it is fueled by an array of other drugs, not opium).

Even if we hang on in Afghanistan, giving our all as we bribe cynical foreign powers to let us feed our troops, what ultimate benefit will make the mission worthwhile? Be *specific*: What do we get out of it?

Can we even define the mission in plain English?

### What Makes Sense

Historically, our military has taken risks with its logistics under three types of circumstances: when we had no choice, as in the desperate efforts in the North Atlantic or the Pacific in the first years of our involvement in World War II; when the gamble was carefully calculated to achieve a clearly

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Marines conduct resupply convoy on Highway 515, Afghanistan

U.S. Marine Corps (Philippe Chasse)

defined end *and* was of limited duration, as in Winfield Scott's march on Mexico City or the culminating maneuvers of Ulysses Grant's Vicksburg campaign; or when we grew overconfident and careless, which led to the Bataan Death March and the collapse of the thrust toward the Yalu in Korea. The fragile lines of communication supporting our forces and those of our allies in Afghanistan do not fit the first two models.

Any serious strategic analysis would recognize that Pakistan is the problem, not part of the solution. Our natural ally in the subcontinent is India, but developing a closer relationship with New Delhi will be strained by our need to warn India off from retaliating after Pakistani-sponsored or Islamabad-condoned provocations. Pakistan has no incentive to stop its rabble-rousing efforts to embarrass India over Kashmir or other matters, since Islamabad is convinced that we will keep an angry India in check. (Were we completely honest with ourselves, we would recognize that a nuclear exchange between India and Pakistan, however grim in human terms, would not only leave India the clear victor, but might solve quite a number of strategic problems.) Under the current conditions, Pakistan, a state that cannot control its own territory, is our regional boss.

And every troop increase in Afghanistan strengthens Pakistan's grip on us. Or, God help us, Russia's hold, if we really get it wrong.

Another obstacle to a more rational approach to Afghanistan is the difficulty that U.S. officers, once given responsibility for a problem, have in admitting that there may be no solution. Our military is not good at cutting its losses. So now we have flag officers who, protesting all the while that Afghanistan is not Iraq, appear intent on applying the techniques that worked in Iraq to Afghanistan: troop surges, security for the population, train up the local security forces, and so forth. While the situational differences are so great that it would require another article of this length to enumerate them, the basic proposition is that Iraq is a semimodern society that wants to get better, while Afghanistan is a feudal society content with its ways and impatient with our presence (in large part thanks to the cynical populism of President Hamid Karzai). In Iraq, religious extremism was imported. In Afghanistan, it sprouts from the soil with the ease of poppies.

And, decisively, Iraq matters.

To determine which strategy makes sense going forward, we need to have the mental discipline to distinguish between what we need to do for our own security and what merely appears desirable to idealists. We *do* need to continue to hunt al Qaeda and to prevent Afghanistan from becoming a safe haven for global-reach Islamist terrorists again. We do *not* need to pursue the disproportionately expensive and probably futile mission of creating a modern state in the Hindu Kush. Indeed, a fundamental problem we face is that Afghanistan was never an integrated state in which a central government's writ ran to each remote valley. Afghanistan has always meant the city-state of Kabul, with tributary cities along caravan routes and tribal regions that coexisted under various terms of compromise with the government and their neighbors. Iraq at least has a nascent, if not yet robust, sense of national identity. Beyond a few Western-educated figures, Afghanistan does not and will not.

If we accept the need to continue the pursuit of our sworn enemies, but abandon the self-imposed requirement to build a modern state where none existed, the dimensions of the problem shrink and our requirements become sustainable. A sound strategy with realistic goals would look different from our present approach, though. Roughly outlined, the strategic goals and means from which we might choose are these:

**Enemy-focused Approach #1.** Concentrate on the continued attrition of al Qaeda and the prevention of an outright Taliban takeover. Cease development efforts. Turn domestic security requirements over to "our" Afghans, reversing our hapless attempt at being an honest broker in favor of supporting those figures and groups willing to fight against the radical Islamists. Reduce our footprint to a force that can, if necessary, be sustained entirely by air (15,000 troops or less). Establish a mothership base at Bagram, with a few subsidiary bases distributed around the country. Design our residual force around special operations capabilities reinforced by drones, conventional attack, and rotary wing aircraft, and sufficient conventional forces for local defense and punitive raids. Ask all NATO forces that do not contribute directly to the core mission of destroying our mutual enemies to leave the country. Ignore the opium issue. Instead of attempting to foster governance, concentrate on rendering

provinces ungovernable for the most extreme Taliban elements, striking fiercely whenever they come out in the open to exercise control of the population.

**Enemy-focused Approach #2.** While less desirable than the first approach, a complete withdrawal of our forces from Afghanistan—while continuing to strike our enemies with over-the-horizon weapons and supporting anti-Taliban Afghan factions to keep the Pashtun provinces ungovernable by our enemies—would still be preferable to an increase in our present forces. Allow Afghanistan to further disintegrate if that is its fate. Let an unfettered India deal with Pakistan.

The past and persistent tragedy of our involvement in Afghanistan began with our unwillingness to accept that punishing our enemies is a legitimate military mission and need not be followed by reconstruction largesse. We never sense when it is time to leave the party, so we wind up drunk on mission creep. At home, a polarized electorate defined our simultaneous commitments solely in domestic political terms: For the left, Iraq was Bush's war and, therefore, bad. But those on the political left felt the need to demonstrate that they, too, could be strong on national security, so Afghanistan became the good war by default. It has been impossible to have an objective discussion of the relative merits, genuine errors, appropriate lessons, and potential returns of each of these endeavors.

In this long struggle with Islamist terrorists, our focus should not be on holding territory, but on the destruction of our enemies. That is a lesson we should have taken from al Qaeda's disastrous engagement in Iraq. Thanks to its own grave miscalculations, al Qaeda suffered a colossal strategic defeat as millions of Sunni Muslims turned against it. Its error was to believe that a terrorist organization could and should hold ground. Al Qaeda immobilized itself by seeking prematurely to administer cities and districts, forsaking its flexibility and losing the war of popular perceptions. In Afghanistan, we are in danger of making a parallel mistake as we assume that physical terrain still matters.

Throw away the traditional maps. Chart the enemy. Our focus should be exclusively on his destruction.

As the Obama administration attempts to come to grips with the Afghan morass, it must begin with the strategist's fundamental question: "What's in it for *us*?" **JFQ**

# Gangs, Drugs, Terrorism—and Information-sharing

By GREG GARDNER and ROBERT KILLEBREW

**T**he conflict in Mexico between the government and criminal drug cartels has been in the news lately, particularly because of the horrific levels of violence and its proximity to our border. The U.S. Government is increasingly concerned, and President Barack Obama has turned to the Chairman of the Joint Chiefs of Staff for options to provide timely support to Mexico. But the “cartel war” in Mexico, which is increasingly spilling into the United States, is just the latest, most

visible indicator of steadily deteriorating civil order south of the border.

Farther south, the anti-U.S. government of Hugo Chavez in Venezuela openly supports Hizballah, which has a growing presence in the “southern cone” of South American states and along the Andean Ridge. Circumstantial evidence is growing of mutual support between the more serious

transnational gangs operating throughout the Americas and the United States and members of state-sponsored terrorist organizations. Throughout the Southern Hemisphere, terrorist organizations and drug gangs are merging into quasi-irregular forces such as the Revolutionary Armed Forces of Colombia (FARC) and other movements challenging local governments. This is no longer

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Airman and military working dog at Soto Cano Air Base support counternarcotics operations in Central America



only a crime problem. Left unchecked, the potential “threat stream” of narcotraffickers and fellow-traveling terrorist organizations will soon constitute an immediate threat to national and local security.

### Domestic Insurgency?

The United States has long been interested in the defeat of South American terrorist gangs and has for decades supported the government of Colombia against the FARC movement. As the grim news from Mexico continues, and violence increasingly spills over the border into American cities and towns, concern in the U.S. Government will grow. The Defense and State Departments can expect to be called on to provide more low-key assistance to Latin American governments to beef up their security services in the face of more FARC-type challenges. On one end of the scale, security cooperation may extend to small military missions inside a U.S. Embassy; on the other, American advisors may be committed on the scale of U.S. support to Colombia, which is emerging as a template for successful collaboration with a Latin American ally. U.S. military and intelligence agency assistance can also be applied regionally, in particular against widespread lawlessness along the Andean Ridge corridor, provided that we act in support of local governments that have requested assistance. U.S. Southern Command has been involved with countries in the region and would lead any U.S. effort.

Inside the United States, however, a growing body of evidence indicates that criminal gangs are taking on the characteristics of domestic insurgents. Efforts to counter the effects of such groups are becoming similar to the wars going on in Mexico against drug gangs or against insurgents in Iraq and Afghanistan. These gangs are wresting control of territory from other drug gangs, intimidating witnesses, targeting law enforcement officials, and committing other hostile acts. Given this sort of dialectical movement toward cooperation between transnational gangs and state-sponsored terrorists, both in the United States and in the criminal and terrorist stew outside our borders, U.S. anticrime efforts must assume that criminal activity—particularly narcogangs operating inside American cities—will eventually become an enabler for terrorist activity either directly or by establishing urban or suburban

“ungoverned spaces” that often result from gang activity.

A key operational point is that the violent transnational gangs of Latin America, including the Mexican cartels, operate with little regard for national borders. Since national sovereignty stops at the border, countering their activities will require, among other things, near-seamless integration of foreign and domestic intelligence programs operated by a wide variety of allied states with American Federal, state, and local agencies. Finding and sealing the seams between U.S.

United States, and Canada. Its leadership operates internationally, sending leaders to the United States to supervise both discipline and businesses, which include drug distribution, prostitution, protection, larceny, and murder. MS-13 exploits the Latin American diaspora to the United States and Canada by integrating itself into the immigrant population and by imposing a brutal discipline, incorporating unspeakable punishments for informing or trying to leave the gang. In Fairfax, Virginia, for example, one law enforcement official

### *inside the United States, evidence indicates that criminal gangs are taking on the characteristics of domestic insurgents*

and allied security programs outside our borders—particularly in the intelligence and information-exchange fields—are our most pressing over-the-horizon challenges. In fact, as President Obama and the Chairman of the Joint Chiefs of Staff, Admiral Michael Mullen, have indicated, this mission may well fall to the joint military forces of the United States in close collaboration with coalition partners.

estimates that all Latino immigrants below a certain age join MS-13, even as informal fellow travelers, as a matter of survival.

U.S. law enforcement reaction to the increasing presence of MS-13 and other Latin American gangs inside the United States is likewise transforming. In response to the geographical growth and mobility of the gangs, new Federal, state, and local

Airman works with Colombian officer during counterdrug mission in South America



National Guard Bureau (Cheryl Hackley)

As an example, one of the leading transnational criminal gangs in the United States is *Mara Salvatrucha*, or MS-13. Originally formed in Los Angeles, then deported to El Salvador, MS-13 now has “branch offices” throughout Central America, the

police cooperative structures are increasingly emerging to link police with their counterparts both nationally and worldwide. For example, Federal Bureau of Investigation agents are now permanently based in San Salvador to work directly alongside

investigators and analysts from El Salvador's *Policia Nacional Civil*. Throughout the United States, though, the daily frontline against gangs is overwhelmingly manned by local police departments. Some forces, particularly the New York Police Department, have professional and well-financed antigang and antiterrorist programs that even extend overseas.

But most frontline forces are not so fortunate, particularly in a struggling economy when cash-strapped municipalities have to choose between cops, schools, and fire departments. Because of the strains in local tax bases, police technology needed to track gangs and exchange information with other jurisdictions is sadly outdated. In one highly regarded antigang force in the Washington, DC, area, for example, data files are endangered because the force's antiquated electronic equipment is subject to both breakdown and hacking. Sharing information with other local forces or task forces nationwide is therefore slower and more problematic.

Gangs, on the other hand, enjoy considerable mobility, and effective law enforcement in one jurisdiction means that gangs simply move to a less contested area, often in a rural

setting where police forces are less robust. As one veteran police officer put it, "When we chased them out of New York, the murder rate went up in New Jersey." Communication and data-sharing among a wide number of Federal, state, and local agencies, from global military and intelligence agency channels to local cops, are key in defeating international gangs, and the results thus far are decidedly a mixed bag.

### Fusion Center Concept

Until the terrorist attacks of September 11, 2001, local law enforcement priorities did not rise to the level of a national security concern. However, the 9/11 Commission identified a breakdown in information-sharing as a key factor in the failure to prevent the attacks. In response to the commission's recommendations, Congress passed and the President signed the Intelligence Reform and Terrorism Prevention Act of 2004. Section 1016 of the law called for the creation of an *information-sharing environment* (ISE) and defined it as "an approach that facilitates the sharing of terrorism information." The law required the President to designate a program manager for the ISE and establish the Information Sharing Council (ISC) to advise the President and program manager.

The implementation plan for the ISE sets forth the following vision:

*A trusted partnership among all levels of government in the United States, the private sector, and our foreign partners, in order to detect, prevent, disrupt, preempt, and mitigate the effects of terrorism against the territory, people, and interests of the United States by the effective and efficient sharing of terrorism and homeland security information.*

*the 9/11 Commission identified a breakdown in information-sharing as a key factor in the failure to prevent the attacks*

After the attacks, then, the law enforcement community gained the additional mission of detection, deterrence, and prevention of future terrorist strikes. As a result, local police must deal with not only the day-to-day issues of crime and the fear of crime, but also the once-in-a-career terrorist attack. The ISC developed a concept of intel-



Colombian soldiers demonstrate counterdrug tactics at U.S. Drug Enforcement Administration in Bogotá

DOD (Kevin J. Gruenwald)



ligence “fusion centers” sponsored by the Department of Homeland Security. Fusion centers tie together all agencies necessary to integrate information about terrorist suspects, locations, and equipment that could be used in the planning or commission of a crime or terrorist act. To date, 58 regional, state, and city centers have been established at a cost of \$254 million supplied to state and local governments to support the centers. While some fusion centers, notably in New York, Los Angeles, and the Dallas region, are highly developed, most are still works in progress.

Typically, fusion centers consolidate resources from various participating agencies into a single primary facility, occasionally with additional satellite locations. The intent of the collocation is to support information-sharing and rapid analysis by allowing access to multiple agency sources in near real time. However, even now, information-sharing is often handicapped by stand-alone, single-agency data terminals or computers, which prevent rapid and automatic data analysis, forcing users to walk from terminal to terminal to integrate data. These challenges could easily be overcome through the employment of modern, secure, and open-architected information technologies. Whether bureaucratic politics and outdated administrative policies can be modified rapidly enough is another question. In contrast, Mexico is developing a police data sharing system called “Platform Mexico,” a nationwide integrated criminal information system to track criminal statistics and move records and intelligence among police and security forces. While the Mexican federal system differs in many ways from that of the United States, police professionals on both sides of the border recognize the value of rapid information transfer and intelligence-sharing to stay ahead of the cartels.

Getting Federal and local law enforcement communities onto common data-sharing standards is not easy. A big issue is trust between agencies—and establishing, implementing, and enforcing the policies, programs, and procedures that build trust between law enforcement and intelligence organizations throughout the U.S. Government structure, including the national intelligence agencies and the Department of Defense. Technology and common standards are key aspects of building that trust. Industry standards are commonly used outside

## Strategic Questions for U.S.-Mexico Relations

By John A. Cope

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Mexico is suffering a crisis of public safety that the United States cannot minimize. Murders, organized kidnappings, and corruption rates have reached some of the highest levels in the world. Mexico’s government is locked in a violent struggle against powerful drug cartels that are also fighting each other for control of territory, resources, and manpower. The United States is the largest consumer of illegal drugs and the main source of the cartels’ high-powered weapons and kit. It also is beginning to suffer some spillover from the violence. The Bush administration accepted some shared responsibility for Mexico’s crisis and, in October 2007, jointly announced the 3-year, \$1.4-billion Mérida Initiative (including a small Central American portion) as a new kind of partnership to maximize the efforts against drug, human, and weapons trafficking.

As the level of violence along the U.S.-Mexico border has become sufficiently threatening, President Barack Obama has asked the Chairman of the Joint Chiefs of Staff, Admiral Michael Mullen, to review how Washington might do more to help Mexico’s forces. But by only looking south, we ignore the seeds of a future domestic problem that have been planted here. If Mexican and other Latin American narco-gangs continue to grow in scope and power within our country, they may become the next-generation irregular challenge to the joint force. The United States and Mexico must find ways to perfect cooperation in the near term and confront a shared security problem together.

Mexico’s level of violence escalated in 2008 with nearly 6,300 people killed—many of them tortured and mutilated—up from 2,700 in 2007. The bloodshed and intimidation carried out with impunity suggest that the cartels have sometimes had the upper hand, particularly in the borderlands. In the United States, the gravity of Mexico’s situation had little effect on the first tranche of the Mérida Initiative. The package of equipment, software, and technical assistance moved slowly through a reluctant U.S. Congress, where the funding request was reduced significantly and several conditions were imposed. There were few signs of urgency.

These circumstances raise several important questions. Should relations with Mexico be higher on President Obama’s foreign policy agenda? How should the administration manifest its commitment to this neighbor, which not only shares intimate ties but also harbors memories of unfair treatment? Are there more meaningful and deeper ways to cooperate in addressing a common problem? Will Washington maintain status quo commitment to Mérida while concentrating on preventing drug-related violence from spilling across the border? Will Mexico be driven to a level of national desperation that will force it to undertake long-term reforms to improve government performance and ties with the general population? (*cont.*)



the law enforcement community, as are open architectures and integrated systems that provide a common view of all data. Furthermore, the use of business intelligence tools, data cleansing, and data-mining algorithms to enhance the quality and reliability of information is common in the business world. In law enforcement communities, however, standards and information management tools/strategies are only slowly becoming more prevalent as these agencies recognize the cost savings and return on investment that industry-standard approaches provide. Convincing thousands of diverse law enforcement and local government officials to adopt compatible, common data-sharing standards remains a tremendous challenge, even assuming consistent funding for updated technology is available—a big assumption. Federal agencies also slow down integration and fusion with concerns about unvetted personnel receiving access to agency data over a nationwide or international network.

Some progress has been made. The Homeland Security Data Network (HSDN), which allows the Federal Government to move information and intelligence to the states at the secret level, is deployed to 19 of 58 fusion centers. Through HSDN, fusion center staff can access the National Counterterrorism Center and exchange the most recent terrorism intelligence. A Global Justice

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*convincing thousands of diverse law enforcement and local government officials to adopt compatible, common data-sharing standards remains a tremendous challenge*

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Extensible Markup Language data model provides standardized information exchange protocol packages that enhance regional information-sharing. This model has recently become the core foundation for a National Information Exchange Model, designed to develop, disseminate, and support enterprise-wide information, exchange standards, and processes. Still, the extent to which these largely incomplete systems can assist law enforcement officials at the lowest levels—where the action is—varies widely. There is also a question whether the fusion centers, the HSDN, and other initiatives are being applied to criminal gangs as well as potential

The crisis has deep roots. In the 1980s and 1990s, successive governments tended to pursue a “live and let live” response to lucrative, brutal, and well-organized regional cartels. Because they provoked violence, jeopardizing public safety, direct confrontations were minimized. With the demise of Colombia’s main syndicates in the mid-1990s, Mexican “families,” which had worked for the Colombians, took control of domestic drug trafficking. By the end of the decade, higher cocaine flows from Colombia led President Ernesto Zedillo of the Institutional Revolutionary Party to collaborate more aggressively with the United States.

The historic presidential victory of Vicente Fox and his center-right National Action Party (PAN) coincided with dramatic increases in narcotics-related violence. During his administration, drug cartels added profitable methamphetamine and heroin to the more traditional cocaine and marijuana they smuggled in bulk into the United States. New markets appeared in Europe and Mexico itself. The expanding narcotics trade encountered stronger U.S. resistance in the post-9/11 era. Washington’s focus on securing the country from terrorists and illegal immigrants resulted in the construction of barriers along the 2,000-mile border with Mexico and more technology and law enforcement personnel to secure it.

Difficulty moving their product into the United States led to a vicious war within and among cartels for control of corridors and local domination of Mexican markets. This clash introduced ruthless militarized gunmen such as Los Zetas, manned with former members of the Mexican and Guatemalan army. President Fox tried unsuccessfully over 6 years to purge and reorganize federal police forces and rein in organized crime, extraditing captured kingpins to the United States. Urban and rural instability escalated sharply, and a general climate of lawlessness encouraged more kidnappings and other types of criminal enterprise.

Felipe Calderón, also from the PAN, succeeded Fox in 2006. Although Mexican military units lacked the necessary training, President Calderón declared war on drug traffickers by committing the loyal armed forces—using more than 45,000 soldiers—in a series of large-scale operations intended initially to restore public order in murder-wracked Ciudad Juárez, Tijuana, and other cities in northern Mexico. It quickly became apparent that the president actually was fighting to reassert state control over cartel-dominated areas. His ability to sustain government presence will be crucial until programs to improve military capabilities and reform the police at all levels can be accomplished.

The Calderón administration faces formidable obstacles to ending Mexico’s fragmented sovereignty and regaining public confidence. The extent of drug-related corruption across government, especially in local police forces, far exceeds even pessimistic expectations. The sophistication of the criminal groups with their state-of-the-art military weapons and equipment—much of it smuggled from the United States—often outclasses the Mexican military. Furthermore, the cartels use kidnapping, brutality, and other forms of psychological intimidation effectively. Some community political and business leaders have left their positions or moved their families to the United States.

The seriousness of Mexico’s insecurity was captured in the February 2009 State Department travel advisory for Mexico:

*Some recent Mexican army and police confrontations with drug cartels have resembled small-unit combat, with cartels employing automatic weapons and grenades. Large*

*firefights have taken place in many towns and cities across Mexico, but most recently in northern Mexico. . . . During some of these incidents, U.S. citizens have been trapped.*

Ironically, the advisory appeared as Mexico's tourism industry reported that in 2008, 22.6 million foreign visitors, the majority from the United States, spent \$13.3 billion, an increase of 3.4 percent over the previous year.

As the crisis intensifies in Mexico, Americans are not immune from cartel violence and corruption. Mexican ties to U.S. organized crime groups have long been established. Major Mexican syndicates are now thought to be present in at least 230 American cities. Over the last 2 years, U.S. multiagency counternarcotics task forces have arrested more than 750 members of the Sinaloa cartel's distribution network and 500 from the Gulf cartel. Police link recent assassinations and mass graves in Arizona and New Mexico to the cartels. Phoenix is now ranked the second worst place for kidnapping globally, after Mexico City: 359 kidnappings took place there in 2008, some of them linked to trafficking. The feared spillover of Mexican narcotics-related violence has, in fact, taken place—and is getting worse. Alarm bells are ringing, but a U.S. strategic game plan has yet to emerge.

Despite a prickly past and many differences, the United States and Mexico are interdependent, and they formalized that relationship with the North American Free Trade Agreement. Our border is the historic face of this complex relationship. With its network of power plants and transmission lines, gas and oil pipelines, and linked highway and rail systems, the borderland is strikingly vibrant and productive. There is a constant flow of people and vehicles in the millions. Beyond the border, the realization of greater mutual understanding, and an enhanced and trusting relationship, is a work in slow motion.

This raises additional and substantial strategic and policy questions. What are American objectives? The Mérida Initiative can be reduced to assistance and cooperation, but to what end? How far is Washington willing to go to reduce the American demand for drugs, curtail arms smuggling south, exchange intelligence, and work with Mexico (and Central American states) to attack the cartels' supply link to South America? Is integrated sea and air control over the approaches to North America feasible? In turn, how far is Mexico City willing to go to work intimately with its neighbor to the north, from whom Mexico traditionally has sought to remain independent?

terrorists, and to what levels. Big-city departments with adequate funding—the New York and Los Angeles Police Departments, for instance—are more likely to have the resources to integrate functions and protocols in adequately staffed fusion centers than are small-town police departments.

The Homeland Security fusion centers are the most visible, but not the only, attempt to integrate intelligence and coordinate activity against criminal gangs and terrorists. Other agencies are involved in assistance to law enforcement, though their efforts are not necessarily targeted against

terrorists. The Office of National Drug Control Policy sponsors the High-Intensity Drug Trafficking Area Program, designed to support and integrate law enforcement activities in designated localities in the United States with high volumes of drug trafficking. In addition to pushing for coordination, this program can provide funding for Federal, state, and local law enforcement investments in infrastructure and initiatives to confront drug traffickers. Other programs exist on regional or local levels to encourage greater data-sharing and commonality of equipment, software, and other

data requirements. But, as is the case of the fusion centers, the results are mixed and may or may not help the cop on the beat or the state trooper at a traffic stop. Much more remains to be done.

The growth of criminal gangs, and the introduction of state-supported Islamic terrorism into the Western Hemisphere, foreshadows the practically inevitable fusion of criminal gangs and terrorists within the borders of the United States. Countering the threat will require fusion on our part, as well—close coordination among military, national intelligence, and law enforcement organizations at all levels. Even with the urgency arising from 9/11, backbone information-sharing systems are still not in place, though the fusion center concept is a sound, cost-effective beginning for making the required intelligence and information-sharing links. We must improve our overall antiterrorist and anticrime intelligence capability by creating a senior position to coordinate domestic intelligence-gathering and its integration into national systems, establishing a grant program to support thousands more state and local intelligence analysts and law officers, and increasing our capacity to share intelligence across all levels of government. With the new Obama administration in office, more attention must be given to countering this widely diffuse challenge. We must do better, and we must act now. **JFQ**

U.S. Air Force (Joe Lawry)



**Virginia Fusion Center, sponsored by Department of Homeland Security, provides criminal intelligence and technical support to local, state, and Federal law enforcement agencies**

Purple Heart recipient TSgt Jerome Baker shows photo taken after his first surgery in Baghdad

U.S. Air Force (Jeffrey A. Wolfe)

Secretary Gates tours Restoration and Resilience Center at Fort Bliss, a local initiative to help treat Soldiers with post-traumatic stress disorder and eventually return them to service

DOD (Cherie Cullen)

# Healing Hidden Wounds

## The Mental Health Crisis of America's Veterans

By DREW T. DOOLIN

**F**rom August 2004 to January 2005, and from January to September 2006, I commanded a Marine Corps logistics battalion of more than 1,100 Marines and Sailors in Iraq whose mission was to provide support for a Marine infantry regiment in combat. My men and women drove over a million miles through the worst of Iraq's "bad guy country"—western Anbar Province. During both deployments, battalion convoys were attacked with improvised explosive devices (IEDs) that resulted in loss of limbs, hearing damage, concussions, and other injuries—and on one occasion members of the battalion were victims of a suicide vehicle-borne IED that caused shattered limbs and permanent disfigurement from severe burns. Just as tragic, we lost Marines and Sailors to vehicular accidents in the line of duty. Even life in the base camp was not free of danger, as we frequently received rocket fire from a nearby town. This was life in our area of operations during the height of the insurgency.

After our return from the first deployment, I held roundtable discussions with my

Marines and Sailors to talk about what we had seen, how each of us would characterize the deployment, what it was like being home, and how those feelings manifested themselves. Many of the participants in these discussions commented that the operational tempo of the deployment was incredibly demanding—and they liked it; that being back in garrison was slow, boring, and meaningless; that those who did not deploy with us "just didn't get it"; and that everyone missed those they served with. Although only a few admitted they had experienced symptoms of combat stress (for example, sleeplessness, anxiety, anger, and intrusive thoughts), most everyone's alcohol consumption had gone up exponentially, suggesting there were some issues my Marines and Sailors were not dealing with.

After these informal discussions, I realized how much my battalion would have benefitted from a formal combat operational stress control (COSC) program that could have provided some training and education before deployment. An established program also would have given me some tools as a

commander to assist my personnel through the transition from war back to "normal" life. During my time in battalion command, I was not aware that such a program existed and wondered what was available to commanders in the other Services. With this in mind, as a Federal Executive Fellow this past year at the Brookings Institution, I have researched what psychological wellness programs are available for today's commanders. I talked with other commanders, psychologists, psychiatrists, licensed counselors, chaplains, and returning war veterans to gain insight on the topic of effective stress control and returning to optimal emotional health following combat. I also reviewed program briefings from each of the Service programs, interviewed people directly involved with these programs, surveyed Servicemembers who were about to deploy or had recently returned from a combat zone, and examined studies on combat stress.

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During my research, I found that until recently there was a lack of investment in mental health care to prepare Servicemembers for combat and to help them reintegrate into life at home. I also found significant barriers to receiving mental health care, which include a lack of sufficient mental health care providers and the cultural stigma attached to self-reporting symptoms of combat stress response. A stigma can come from military culture itself, society in general, or the terminology used to describe and treat combat stress reactions. Thus, this article discusses barriers to care, provides a current model for mental health care, and examines each of the Services' programs to explain the progress made since my time in command and to highlight where improvements are needed. In addition, the article suggests recommendations for further program development.

## Background

America's returning veterans of Operations *Iraqi Freedom* and *Enduring Freedom* are in the midst of the largest mental health crisis since the Vietnam War. The Department of Defense (DOD) is undergoing a "full court press" to address this problem. A review of recent studies reveals that hundreds of thousands of war veterans manifest combat stress responses that require identification and treatment as early as possible to reduce more serious and long-lasting effects of combat deployments.<sup>1</sup> These studies suggest that the *length* of combat tours, *number* of repeated tours, and *time* between deployments have a significant impact on the psychological health of the military force.<sup>2</sup> Moreover, the direct combatants are not the only ones who are suffering from these hidden wounds.

These wars have reshaped the combat construct. Logisticians in supply convoys, engineers repairing road networks, explosive ordnance disposal teams, those who handle remains, and those working in base camps also feel the effects of war and are often the target of enemy activities. Furthermore, military members who serve stateside in a variety of roles and missions are affected by combat-related stress, as are their families.

Post-traumatic stress disorder (PTSD) receives the most media attention and is therefore more widely known, but other serious conditions, such as major depression, anxiety, substance abuse, impairment in social functioning, and inability to work, can be stress-related illnesses that may require professional

intervention. From a commander's perspective, far more common are veterans who experience stress responses, such as feelings of guilt, anger, decreased energy, social isolation, and the need to replicate the "rush" of combat. While these symptoms are not definite indicators of psychiatric illness, Servicemembers who exhibit these symptoms would greatly benefit from education and treatment.

The leadership at the highest levels of each Service is fully aware of the scope of this crisis, but a knowledge gap exists at the battalion level and with midcareer officers and enlisted leaders. Not only are these individuals unaware of the magnitude of the psychological

national response must be evaluated because it is unrealistic to expect in mere months a perfect solution that should have been developed decades ago. Fortunately, the interest and resources to fund program development are now in place and must be capitalized upon.

The mandate for DOD-wide strategy development, plans, policy, and compliance lies within the Office of the Assistant Secretary of Defense for Health Affairs (OASD[HA]). This office develops the overall plan for addressing psychological health and traumatic brain injuries. A subunit of OASD(HA) is the Defense Centers of Excellence (DCoE) for Psychological Health and Traumatic Brain Injury,

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## *returning veterans of Operations Iraqi Freedom and Enduring Freedom are in the midst of the largest mental health crisis since the Vietnam War*

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health problems of returning combat veterans, but they also are unfamiliar with their own Services' formal combat operational stress control programs.

The Army and Marine Corps have the highest reported numbers of combat-related mental health problems. However, the four Service programs—the Army Battlemind program, the Marine Corps COSC program, the Navy Operational Stress Control program, and the Air Force Landing Gear program—remain separate and distinct initiatives whose differences do not stop with their titles. Understandably, each Service reserves the right to modify its program to fit its own cultural needs and to institutionalize the program as the Service deems appropriate.

## Mandate for Action

The National Defense Authorization Act for Fiscal Year 2006 directed the Secretary of Defense to establish a task force to examine mental health matters within the Armed Forces and to provide a report that would assess the efficacy of mental health services provided by DOD.<sup>3</sup> This was an important step to address the problem, but this effort is 30 years too late. Unfortunately, following the Vietnam War, the Nation was not interested in tackling veterans' mental health problems. The result is a generation of veterans who still struggle with mental health issues, many of whom are homeless and live over steam vents. The herculean effort currently applied to this enormous and complex problem was needed in the years between the end of the Vietnam War and today. The current

whose mission is to "maximize opportunities for Warriors and families to thrive by leading a collaborative global network promoting resilience, recovery, and reintegration for psychological health and traumatic brain injury."<sup>4</sup> According to its director, Brigadier General Loree Sutton, USA, the goal of the DCoE is to help the individual Services and their programs to "build resilience, mitigate injury, intervene early, and treat when needed."<sup>5</sup> The DCoE has developed a "resiliency model" (see page 76) to illustrate its program development of these four concepts.

## Barriers to Care

Building the "perfect" program is difficult. Even the best-designed program will face personal or professional opposition. In addition, widely known barriers to care need to be overcome to make programs accessible to veterans and their families. The stigma attached to seeking mental health treatment is the most significant barrier to receiving psychological care.<sup>6</sup> The most common reason military members cite for not fully reporting operational stress injuries with the Post Deployment Health Assessment or Re-Assessment or for not seeking professional help is the fear that their careers will be negatively affected.<sup>7</sup>

Access to care is the second most significant barrier to seeking help. Simply stated, there are not enough mental health care providers.<sup>8</sup> Furthermore, professionals who can treat patients are not forward deployed. This is where I believe their assistance would be most effective. Mental health care providers should give

support at the battalion level and deploy with their unit. Chaplains I have interviewed stated that being forward deployed is the most effective place to provide spiritual care. Moreover, sharing the hardships of a deployment with troops gives chaplains instant credibility. Troops know the chaplain “gets it.” This method should work for mental health care providers as well.

Procedural barriers, policies, programs, or language can also inhibit individuals from seeking care. The most noted procedural barrier was the infamous “Question 21” on the security clearance questionnaire. Previously, anyone who applied for a security clearance and answered “yes,” indicating he or she had received mental health counseling, could be denied a security clearance. Now, personnel who have undergone or are undergoing mental health counseling are excluded from reporting counseling related to marital, family, or grief issues and only need to report violence by the member.

Still, cultural barriers may be the most difficult to overcome. The military in general and the individual Services in particular go to great lengths to develop their respective cultures. This modern “warrior class” is rightfully inculcated with an unofficial code, or Service-specific ethos—core values that bind professional soldiers together. These beliefs and the warrior culture itself, however, can deter Servicemembers from seeking help. As an Army captain commented, “Seeking mental health care means that you are not ‘Army Strong.’”

Another cultural barrier revolves around ownership and responsibility in the chain of command for the mental wellness of one’s sub-

ordinates. A mental wellness program that is in the domain of the clinician (the “psych” doctor) has inherent barriers in its design and execution before it begins. The same can be said if the unit chaplain owns the program, although possibly to a lesser negative degree. Successful programs are built on a team concept, whereby the commander leads the effort, assisted by professionals who are fully integrated into the unit.

### *the stigma attached to seeking mental health treatment is the most significant barrier to receiving psychological care*

Likewise, language used in advertising, diagnosing, treating, or discussing a stress injury is a cultural barrier to care. Many people incorrectly refer to a variety of symptoms as PTSD, which creates a false belief that PTSD is an “all or nothing” proposition—one either has no symptoms or one has PTSD.<sup>9</sup> However, many troops experience stress reactions that fall short of a PTSD clinical diagnosis yet do not seek help because of the false belief.

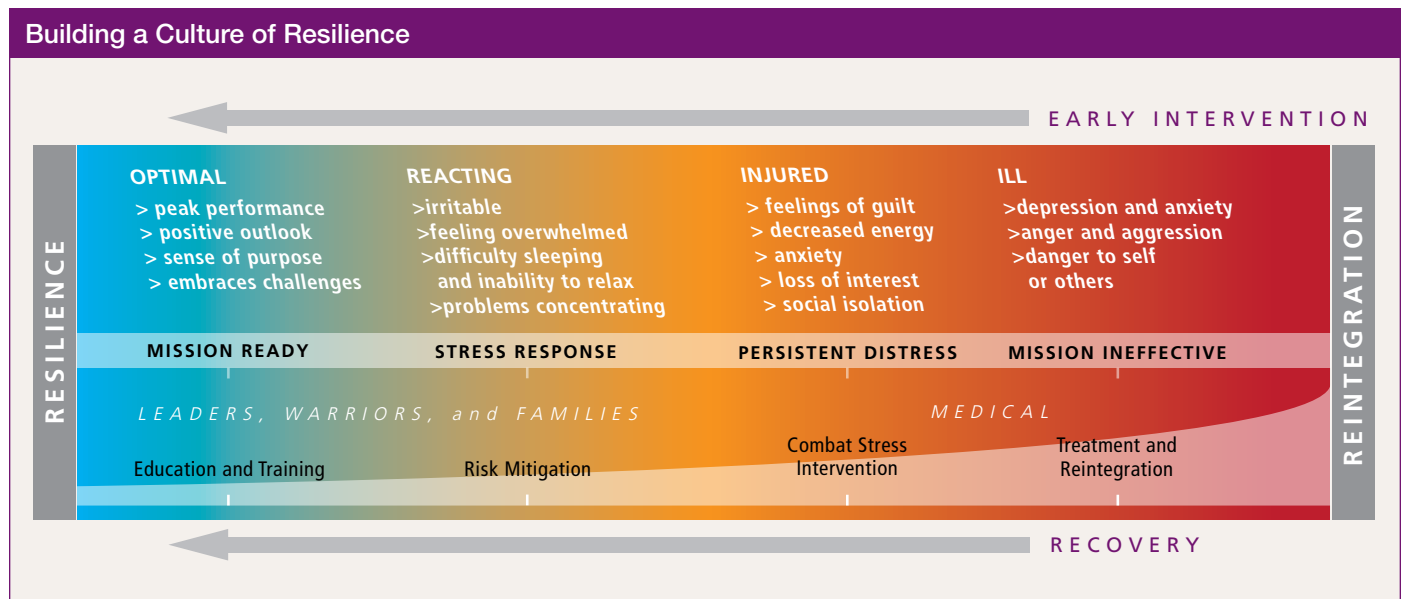
Rear Admiral Richard Jeffers, the Medical Officer of the Marine Corps, believes DOD needs a 50-year approach to program design to overcome the stigma barrier to care and to institutionalize help-seeking behavior.<sup>10</sup> It may be, however, that stigma toward mental health care is generational. In general, Generation Y (individuals born between 1980–2005) views the world differently than previous generations and is more accepting of “hot button” issues,

such as homosexuality, women in combat, and diversity. In particular, members of Generation Y may not be as inhibited to seek mental health care if that is the norm in the military culture of their time. Anecdotal evidence suggests that if a trusting environment about seeking mental health care is established at the battalion level, young warriors will be more likely to self-report mental health issues. If future studies support this evidence, it may not take as long as predicted to eliminate the stigma of seeking mental health treatment. Thus, there is hope the younger generation may more readily accept the vital role of mental health care in force and family readiness.

### **DCoE Resiliency Model**

The resiliency model depicts the continuum of an individual’s psychological health, with the goal to keep or return individuals to the resilient and optimal level of performance and well-being (see left side of model). The model helps individuals, families, units, professional care providers, and educators identify and initiate the appropriate response during a particular stage in one’s psychological health in order to provide appropriate training, education, or treatment and to intervene early. The objective is to return individuals to their optimal status and continue to be mission ready, both at home and at work.

With the resiliency model in mind, an optimal combat operational stress control program should include tenets that address each zone of the model from “optimal” to “ill,” and should provide training and education throughout an individual’s career. This training



must include families and focus on the most demanding circumstances, which are the three phases of the deployment process. Building on the elements of the DCoE model and my research, I have developed new criteria that mental health care personnel should include in an ideal military program.

The table below depicts 11 elements necessary to design an optimal military mental health program. It also grades the respective Service programs against these criteria. These elements were derived from discussions with commanders, mental health care professionals, chaplains, and several developers of the Service programs. They can be used by psychiatrists or social workers to evaluate programs. For example, using the first element, an evaluator could ask whether the mental wellness program includes stress control training throughout an individual's career. If it does, the evaluator might assign a score (using a Likert-type scale) that determines to what degree the essential element is performed. These 11 optimal design elements will be applied to each formal Service program.

Using the proposed criteria, I evaluated the four existing COSC programs to determine whether they include all the necessary components for a quality program and what elements the programs are missing and whether any elements need improvement.

### The Service Programs

Given that the Army and Marine Corps have the greatest number of members who report psychological health-related symptoms, Battlemind and the Marine Corps COSC program are examined first. In addition to the formal programs offered by each Service, several of the disparate features are mentioned.

**Army Battlemind Program.** This program design calls for training and education materials throughout one's career continuum and is meant to be "leader-owned" (although it appears to be a medical program forced on the leadership). Battlemind provides standardized training and education materials at most of the critical points in the deployment cycle, includes training and education materials for families, uses an excellent Web site and a

variety of training materials to present topics, and is designed to be culturally accepted by Soldiers, though the program may benefit from improvement in three areas. Specifically, it should:

- include continued training and education materials during deployments as well as in-theater treatment
- adopt a holistic approach to wellness by integrating the mind, body, and spirit aspects of health into one program
- ensure that the entire Army population receives this training instead of being infantry-centric.

*the objective is to return individuals to their optimal status and continue to be mission ready, both at home and at work*

However, a new Army initiative, the Comprehensive Soldier Fitness Program, may cover these specific deficiencies in Battlemind. If this happens, Battlemind may need to be rolled into the new program.

In execution, Battlemind can be improved by getting the word out that the program exists and is beneficial. In an interview with an Army captain who recently returned from a 15-month tour in Iraq with the 407<sup>th</sup> Brigade Support Battalion of the 2<sup>d</sup> Brigade Combat Team, 82<sup>d</sup> Airborne Division, he noted that he had not heard of Battlemind; prior to deployment, the battalion received some information provided by their family services organization that was helpful but did not cover combat stress; and the only redeployment training the battalion received was a short, informal, chaplain-led roundtable held in-theater, during which some reintegration topics were discussed.

As part of my research, I conducted an informal, anonymous, and admittedly unscientific survey that supports the captain's comments. Of those who responded, 88 percent were aware of Battlemind, but only 66 percent were required to attend predeployment training. Merely 44 percent were required to attend postdeployment training. Of those surveyed, 44 percent self-reported stress symptoms, but only 25 percent sought help, with the remainder believing they could handle their symptoms without professional help.

### Eleven Elements for an Optimal Military Mental Health Program and Service Ratings for Respective Programs

Service	Career education	Leadership-owned	Predeployment	During deployment	Post-deployment
Army	★	★	★	★	★
Marine Corps	★	★	★	★	★
Navy	★	★	★	★	★
Air Force	★	★	★	★	★

Service	Families included	Multiple methods for access	Treats mind, body, spirit	Credible facilitators	Widely known and used	Combats stigma
Army	★	★	★	★	★	★
Marine Corps	★	★	★	★	★	★
Navy	★	★	★	★	★	★
Air Force	★	★	★	★	★	★

Key: ★ Good in current Service program; ★ Passing but needs improvement in current Service program; ★ Failing or nonexistent in current Service program.



As the table illustrates, the Battlemind design also calls for training and education throughout a Soldier's career. Yet when the captain from the 407<sup>th</sup> attended a career level course following his deployment, neither Battlemind nor general stress control were mentioned in the curriculum. Therefore, at this time, the program design may fall short in the career education category. Battlemind may be the most polished of the four programs, but as with all of the Service programs, success or failure depends on execution.

The Army has an additional program at the Fort Bliss Restoration and Resiliency Center that should be rolled into Battlemind or the new Comprehensive Soldier Fitness Program. This center provides holistic treatment in both Western- and Eastern-style treatment for Soldiers with PTSD. Although this center and its methods are one of a kind,

an optimal program, although, like the Army program, it needs improvement in several key areas. Like Battlemind, the Marine Corps COSC does not currently include enough continued training and education while the unit is deployed. Indeed, there are debriefs conducted by commanders after particular events, but nothing that addresses the day-to-day stresses all deployed personnel feel. While it may be unreasonable to hold training while actively on the march to Baghdad, during "steady state" operations such as those in Iraq in recent years, a commander should find time to continue stress training and education, focus on optimal physical and mental functioning, and further seek to identify the resources that are available.

The Marine Corps seems to agree with the idea of continuing training and education while deployed. Marine Corps Bulletin 6490 directs a commander to conduct an

A deficiency as detrimental as the lack of continued training and education while deployed is the absence of a useful Web site that can carry all of the available training materials and resource points of contact. Currently, the standardized training materials are buried in the Marine Corps Manpower Web site and are difficult to locate.

Additionally, an area the program can quickly and easily improve is in the integration of the mind, body, and spirit aspects of personal health. The Marine Corps has an excellent fitness program called Semper Fit that, along with the Chaplains Religious Enrichment Development Operation, can be better integrated into the Marine Corps COSC program. This integration will improve the effectiveness of the "body, spirit" aspects of the program.

In execution, the Marine Corps COSC program fails in the "widely known and used" category. Interviews with two battalion commanders (one returning from Afghanistan and one deploying to Iraq) highlighted the same reality. Although both had seen Marine Corps Bulletin 6490 on the COSC program,

Lt Col Mike Jaffee, director, Defense Veterans Brain Injury Center, and then-COL Loree K. Sutton, director, Defense Centers of Excellence for Psychological Health and Traumatic Brain Injury, hold media roundtable



*Battlemind may be the most polished of the four programs, but as with all of the Service programs, success or failure depends on execution*

it is one example of the many disparate efforts taking place that, if deemed valuable, need to be duplicated and better coordinated inside the larger Service programs.

**Marine Corps COSC Program.** The Marine Corps has taken a comprehensive approach to addressing the mental health of returning war veterans. The COSC program was first chartered in 2005 and differs from the programs of the other Services in that it places the ownership, responsibility, and accountability squarely on commanders. This program design successfully covers a majority of the elements of

"operational pause" for some reintegration preparation immediately prior to a unit's return to the United States. This same idea can be integrated mid-deployment, or at varying times during deployment, to allow for continued training and education. Similarly, commanders at all levels have used "stand downs" when an adjustment is needed in unit tactics, techniques, procedures, and equipment. Stand downs are important because they allow for adjustments necessary to accomplish the mission. Therefore, logic dictates that the same could be said for a personnel stand down.

neither was fully aware of his responsibility as commander, nor was he aware of the standardized materials available for use. A strategic communication plan led by the commandant and sergeant major of the Marine Corps must be developed to gain a broad familiarity and improve cultural acceptance of the program. A congressional staffer commented during a recent interview that "when the average Marine knows as much about the USMC COSC program as he does the new combat fitness tests and body fat standards, then you'll have something."

The Theater of War Project, which was introduced to the Marine Corps by a non-DOD entity, is a series of dramatic readings from translations of Sophocles' *Ajax* and *Philoctetes*. These readings have become a catalyst for discussion among audiences such as first responders, college students, and military personnel about health care, chronic illness, and veterans returning from war. This inspirational piece of theater may be a key to helping vet-

erans return to optimal health. It is, however, presented by one theater company and can only reach a limited number of audiences. This initiative was first presented at the Marine Corps Combat Operational Stress Conference in San Diego in August 2008, and was repeated at the DCoE Resiliency Conference in November 2008. Unfortunately, both performances were presented to care providers and leaders, as opposed to the sufferers of operational stress injury who would have benefitted most.

Using Samurai techniques to cope with combat and PTSD is the focus of the Warrior Mind Training classes at two major Marine Corps bases. Here again, this type of treatment is interesting but limited in availability, and evidence of efficacy is only anecdotal so far. If these classes prove effective, Warrior Mind Training, like similar programs, could be rolled into the larger Marine Corps COSC program and expanded. This may help to integrate mental and physical wellness within the program.

#### ***Navy Operational Stress Control***

**Program.** This program is the newest, having been signed into being November 21, 2008. As it is being institutionalized, the curriculum and training are being developed jointly with the Marine Corps. The Navy program differs from the Marine Corps COSC program in that it takes a broader view of operational stress, as Sailors more often have stress-related symptoms that are associated with deployments other than combat. Both the Navy and Marine Corps programs use the same resiliency model that was the precursor to the DCoE model. Given the fledgling state of the Navy program, the jury is still out on how it will be executed. In design, the program benefits from the lessons learned from both the Army and Marine Corps programs. The Navy program will attempt to cover all 11 proposed elements of an optimal program.

The Navy Reserve Returning Warrior Weekend program is an adjunct initiative in addition to the formal operational stress control program. These Returning Warrior workshops bring together guest speakers, clinical health care providers, chaplains, the Department of Veterans Affairs, family services, and other combat veterans to introduce available resources and care to aid in the reintegration process. These retreats get high praise because facilitators are often warriors themselves, and therefore they have instant credibility. But these retreats are limited in size and reach only a small portion of those who could benefit. The

workshops should be reassigned to the regional or base and station Family Service Centers, which can provide more retreat opportunities targeting both Active-duty and Reserve units instead of regions and can thus be offered to many more veterans.

**Air Force Landing Gear Program.** Statistically, the Air Force has the smallest problem in terms of combat stress and PTSD, with 1 percent of Airmen being diagnosed with PTSD and 4.7 percent showing one or more symptoms of combat stress injury. However, Air Force discharges from PTSD jumped from 10 in 2001 to 110 in 2007. The Air Force program is more clinician-focused than the other programs and expends significantly fewer resources on the career training continuum as well as predeployment and postdeployment training, with just 30 to 60 minutes allotted to each of the pre- and postdeployment phase

accurate as the answers given in the survey. It is widely recognized by commanders and clinicians alike that PDHA data are highly suspect due to minimization of stress reaction symptoms in self-reporting because of stigma issues. Furthermore, the approach of focusing on a small population at risk does nothing to reduce the stigma of help-seeking behavior, potentially reducing the value of the PDHA further.

With the seemingly small number of Airmen in need, the Service believes that the Landing Gear program is the best approach. Due to this dramatically different view of program design, comparing Landing Gear to my suggested 11 optimal program elements results in unflattering marks in 10 of the 11 elements. This begs the question of which approach is correct. Clearly, I believe a more comprehensive approach is better than the Air Force method.

DOD (Chad L. McNealey)



ADM Mullen visits patients of Traumatic Brain Injury Warrior Resiliency and Recovery Center, Fort Campbell

### *the fledgling Navy program benefits from the lessons learned from both the Army and Marine Corps programs*

training packages. The program relies on leaders to identify Airmen at risk and weighs heavily on the usefulness of the Post-Deployment Health Assessment (PDHA) survey to identify those who need mental health care. The weakness is that the PDHA is only as

Despite the above, the Air Force currently has an innovative program that is perhaps the best example of building an initiative from the ground up with the specific culture of its designated audience in mind. The program, designed by an Air Force psychologist, is called One Shot, One Kill. This pilot program is a performance enhancement tool that provides predeployment information about how to maintain mental wellness for line leaders and supervisors. It was created to operate to the left side of the DCoE resiliency model. This program uses common language and takes out

words and phrases that Airmen would consider “clinician-speak.” Therefore, the program is culturally accepted. Each offering of the training has achieved maximum attendance.

### Recommendations

Based on the information above, there are seven major deficiencies in the DOD response to the ongoing mental health crisis facing returning veterans:

- insufficient number of mental health care providers
- lack of leader buy-in and responsibility for COSC programs
- lack of comprehensive and culturally acceptable approaches to building and maintaining resilience
- poor synchronization inside each program as evidenced by the adjunct and disparate activities taking place outside the formal programs
- lack of programs to combat stigma
- barriers to care
- inadequate efforts to get the word out on each program.

The military mental health care situation is bigger than any one Service. It requires inter-Service, DOD, and interagency involvement. To achieve the best outcomes for our returning veterans and their families, the Chairman of the Joint Chiefs of Staff, Service chiefs, leaders at all command levels, and individual Servicemembers must play a part in improving the DOD mental health care system.

The Chairman should appoint the Vice Chairman as the uniformed advocate for all Service combat operational stress control programs and establish an oversight council for comprehensive Servicemember fitness. This body would be chaired by the Vice Chairman and attended by the vice chiefs of Service, the DCoE director, and each Service’s representative for comprehensive fitness. The role of this council would be to review, validate, integrate, synchronize, and standardize each Service’s program.

DCoE should develop measures of effectiveness to evaluate program successes and failures. As DOD’s executive agent for coordination, it should review all disparate activities and recommend what should be integrated into individual Service programs and what should be eliminated. In essence, DCoE should be the clearinghouse for good ideas. It should also examine best practices for inoculation used by

first responders, emergency room personnel, and other professionals who may provide valuable insight into DOD training deficiencies.

The Services should:

- ensure that respective programs are leader-driven wellness programs that reach everyone
- institutionalize combat operational stress control programs so they become an enduring part of Service culture
- ensure that respective programs appeal to and are relevant for their populations
- develop a population-based (everyone receives training, education, and treatment), integrated, holistic approach to wellness
- develop an aggressive strategic communication plan to get the word out about programs
- ensure that all training and education are standardized across programs
- hold leaders accountable for conducting the required training and education modules
- develop a peer-to-peer counseling program whereby former troops who have deployed, experienced operational stress injuries, and benefitted from counseling or treatment are contracted to serve as peer counselors
- select, train, and certify credible instructors
- increase the number of mental health care professionals and assign them down to the battalion level
- identify to DCoE any adjunct initiatives that fall under the realm of their particular Service to allow DCoE to review these initiatives.

Leaders should get on board and support their respective Service programs to aggressively eliminate stigma and also develop an atmosphere of trust. They should emphasize that seeking mental health care will not negatively affect a Servicemember’s career.

Individuals should understand that stress injuries can happen to even the strongest, best trained, and most prepared warrior. Calling in “supporting fires” is an admirable and responsible way to take charge of overall fitness.

There is a significant mental health crisis in the military that will only become greater as the wars in Iraq and Afghanistan continue. While a great deal has been accomplished to support the returning veterans since my time in command, there is an opportunity to

improve and institutionalize the current programs, make them more relevant and widely accepted, and take a different approach to mental health care DOD-wide. The Department of Defense must shift from a clinician-owned and -operated, treatment-centered, facility-based effort to a comprehensive, leader-driven wellness program that reaches everyone. The formal programs initiated by each Service and the disparate initiatives in use are well intentioned but need some revision. Even if the wars in Afghanistan and Iraq ended today, the Nation would face a need for mental health care services for years to come. Addressing this challenge is the moral obligation of the Services, the Department of Defense, and the Nation itself. **JFQ**

### NOTES

<sup>1</sup> A 2007 study by the RAND Corporation estimated that nearly 20 percent (approximately 300,000) veterans have been affected by combat experiences. This estimate focuses only on those whose combat stress reactions fall into the “illness” category where stress injuries do not heal without intervention. Data collection methods for this study have been noted by clinical professionals as less than optimal, but the point remains that the number of veterans who have been affected by their experiences is significant.

<sup>2</sup> See Mental Health Advisory Team V, “Operation Iraqi Freedom 06–08: Iraq; Operation Enduring Freedom 8: Afghanistan,” February 14, 2008, available at <[www.armymedicine.army.mil/reports/mhat/mhat\\_v/Redacted1-MHATV-4-FEB-2008-Overview.pdf](http://www.armymedicine.army.mil/reports/mhat/mhat_v/Redacted1-MHATV-4-FEB-2008-Overview.pdf)>.

<sup>3</sup> Department of Defense Task Force on Mental Health, *An Achievable Vision: Report of the Department of Defense Task Force on Mental Health* (Falls Church, VA: Defense Health Board, 2007), 1.

<sup>4</sup> See <[www.dcoe.health.mil/about.htm](http://www.dcoe.health.mil/about.htm)>.

<sup>5</sup> Brigadier General Loree K. Sutton, USA, opening remarks at Defense Centers of Excellence Warrior Resilience Conference: Partnership with the Line, Fairfax, VA, November 18, 2008.

<sup>6</sup> Department of Defense Task Force on Mental Health.

<sup>7</sup> See “Invisible Wounds: Mental Health and Cognitive Care Needs of America’s Returning Veterans,” RAND Center for Military Health Policy Research, 2008, available at <[http://rand.org/pubs/research\\_briefs/2008/RAND\\_RB9336.pdf](http://rand.org/pubs/research_briefs/2008/RAND_RB9336.pdf)>.

<sup>8</sup> Ibid.

<sup>9</sup> Dr. Thomas Gaskin, director, Marine Corps Combat Operational Stress Control Program, interview with author, February 23, 2009.

<sup>10</sup> Rear Admiral Richard Jeffers, USN, interview with author, November 18, 2008.



# The Joint Narrative

## Describing the Future Environment and Joint Operations

By JAMES N. MATTIS

**A**mong the most vexing challenges that confront today's national security professional are the notions of change, complexity, and uncertainty, and more importantly how to respond to these. Two recently published documents make important contributions toward addressing these issues. U.S. Joint Forces Command (USJFCOM) published the *Joint Operating Environment (JOE) 2008* in November to describe potential future operational environments and their implications for the joint force. The JOE outlines likely challenges and opportunities, in essence describing the demand signals for the future joint force. The *Capstone Concept for Joint Operations (CCJO)*, signed in January 2009 by Admiral Michael Mullen, Chairman of the Joint Chiefs of Staff, articulates his vision for how the future joint force will address the challenges and opportunities of the future operating environment, meeting the demands described in the JOE.

The principles of joint operations found in the JOE and CCJO form a strategic framework that outlines how the joint force can best address future challenges. The dominant themes found in these two documents can be thought of as an emerging joint narrative—a succinct, cohesive, and coherent logic that connects the complex and uncertain threats and opportunities of the future to the concepts of joint force operations, and then to joint doctrine.

The idea of the *joint narrative* is the opening statement in a larger conversation about the nature of the future and the role of the joint forces within it.

The major theme of the emerging joint narrative is doing what is required to prevail in current fights while simultaneously preparing for an uncertain future. This requires a balanced and versatile joint force that is

General James N. Mattis, USMC, is Commander, U.S. Joint Forces Command.

Helicopters extract Soldiers following combat operations south of Balad Ruz, Iraq

DOD (Walter J. Peis)

superior across the full spectrum of military operations. Without balance, we risk being dominant but irrelevant—that is, superior in nuclear and conventional warfare but vulnerable in irregular contests.

As Secretary of Defense Robert Gates has emphasized, the defining principle for defeating both current and future threats is balance, and this is the central thesis for the joint narrative. Recognizing and avoiding our strengths, our future enemies are likely to confront us through indirect methods, in wars of a hybrid nature that combine irregular and conventional modes of attack, using a blend of primitive, traditional, and high-tech weapons and tactics.

This article highlights the ideas contained within the JOE and CCJO—the companion documents that begin to outline the joint narrative.

### International Environment

The purpose of the first element of the joint narrative, the JOE, is to focus national security professionals on the security environment 8 to 25 years into the future. The JOE approaches this goal by examining three questions:

- What trends and disruptions are likely to affect the joint force over the next quarter century?
- How are these trends and disruptions likely to define the contexts for joint operations?
- What are the implications of these trends and contexts for the joint force?

Although the JOE is speculative and does not presuppose what will happen in the next 25 years, it is intended to serve as a starting point for discussions about the future security environment at the operational level of war. JOE 2008 first recognizes that while much about the future will change, much will also stay the same. The nature of war will not change. Fundamentally, war will remain an endeavor based in competition and conflict between two learning, creative, and adaptive forces. It will retain its political dimension, whether originated by state or nonstate actors. Fog and friction will continue to distort and conceal, perturbing judgment and the course of events.

As well, despite our best efforts at prediction, the future will be characterized by uncertainty, change, and surprise. One only has to examine the last 25 years to see that much of what has transpired was almost completely unforeseen. Surprise will never be eliminated, but the JOE contends that we must make the effort to forecast the future, or we will certainly be caught off guard.

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*war will remain an endeavor based in competition and conflict between two learning, creative, and adaptive forces*

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After the discussion of constants in human nature and in the nature of warfare, the JOE quickly transitions to a description of some of the major trends that are changing today's world into tomorrow's. JOE 2008 describes changes in a number of areas that

will have significant implications for the future joint force. These include shifting demographic patterns and the relative economic strength of great powers around the world. Most specifically, the balance of economic strength is shifting away from Europe and North America and toward emerging Asian economies. The JOE looks at the phenomenon of globalization with its expanding trade and investment patterns and movement of peoples around the world. It also includes a discussion of the nature of energy scarcity, its relation to geopolitical events, and the increasing scarcity or abundance of other natural resources, such as water and food. Another situation depicted in the JOE is the nature of technological change, including key trends in the information revolution, the realm of cyber threats, and the exploitation of space for civilian and military purposes by a wide array of actors.

The trends discussed in JOE 2008 can be grouped by three major themes: trends that are eroding conventional state power, trends that are enhancing conventional state power, and trends that are accelerating the pace of change.

The first group of trends highlights that the state as a unit of political organization is increasingly competing with a range of actors for power and influence. As borders become ever more permeable to trade, human migration, information, and money, states will find their claims to legitimacy and the allegiance of their citizens challenged by other groups, associations, and identity-based networks. For this reason, the international environment will feature states that are increasingly unable—or unwilling—to maintain a global monopoly on violence and war. Thus, irregular and unconventional forms of conflict feature prominently in JOE 2008.

The second major theme of future trends is that, while the state is certainly being challenged by a host of unconventional powers, it will likely remain the primary broker in providing security and stability for the next quarter century—even as many states employ proxies to engage in unconventional conflict, or more accurately, a hybrid form of conflict employing both conventional and unconventional means. The United States will maintain the largest single concentration of power in the world, but the margin of primacy is shrinking as the economic, political, military, and cultural power of other states grows more quickly. For this reason, new centers of conventional power will emerge in the international arena. This “rise of the rest” will rebalance relations between the

MQ-1 Predator unmanned aircraft armed with AGM-114 Hellfire missiles flies combat mission over southern Afghanistan



U.S. Air Force (Leslie Pratt)



United States and these new centers of power and feature aspects of both competition and cooperation.<sup>1</sup> As the population continues to grow more rapidly in the developing world, and as new economic and scientific powers rise in Asia, the world of the 2030s will be characterized by growing economic and technological power around the globe and greater levels of wealth and prosperity. Moreover, that world will feature far greater potential for encounters with state adversaries with advanced technical, human, military, or economic power. Thus, the future joint force may confront new or heightened forms of competition in space and cyberspace, over the global commons around the world, or for the control of sources of scarce natural resources used to fuel growing economies and the chokepoints that link great nations to the world around them.

The third major theme of the trends found within the JOE is the increasing complexity of networks around the world and the speed at which technological change is occurring. The globalization of trade and financial links means the United States is more dependent than ever on the foreign financing of its debt and must import critical technologies such as microchips or Internet routing hardware used throughout our society and by our joint forces. Military procurement programs that take decades may be obsolesced in an afternoon by new technological innovations. Meanwhile, faraway events, such as a pandemic health crisis in Africa or an earthquake in Asia, can have global repercussions that may swiftly draw U.S. interest. Issues such as climate change could exacerbate humanitarian disasters in unanticipated ways. Increasing connections and the speed of technological change mean adversaries will have more avenues to “reach into” U.S. society and attempt to directly influence or bend it to their will—through violence or persuasion.

### Contexts of Future Conflict and War

The task for the JOE 2008 was to resolve the many complex and disparate trends found at the strategic level and translate and focus them into hard-hitting, operational level challenges. The device that USJFCOM developed to make this transition is the idea of “contexts.” These contexts are a set of troubling “knots” in which technological, geopolitical, legal, social, and demographic trends might merge to create conflict and war. Together, these contexts describe a potential set of circumstances that might explain how and why future wars could

be waged and the vectors through which the joint force may become involved.

Competition and cooperation among conventional powers will likely remain the primary context for the joint force as states will remain the most powerful institutions in the international environment. States often have massive military, economic, social, and legal resources at their disposal and will act in the international environment to secure those interests. Often, state powers around the world will have many interests in common with the United States, and the joint force will have a role in encouraging or reinforcing common interests with these states. At times, conventional state powers will perceive their interests to be at cross-purposes, or even opposed to U.S. interests around the world. In these cases, the joint force will have a role in deterring or dissuading these activities. The United States will likely remain the most powerful state over the time frame posed by

the JOE. However, in a world of perhaps a dozen countries with populations greater than 100 million and economies larger than \$100 billion, it will not have the ability to dominate or dictate and must seek to partner with others to achieve its security objectives.

*procurement programs  
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Threats from unconventional powers will be the second major challenge for future joint forces. Militias, transnational terrorist groups, international criminals, pirates, and other “substate” or “trans-state” entities will challenge both states themselves and the wider international system in which they are embedded. Empowered by weakening state borders and massively increasing flows of money,

**The Joint Operating Environment 2008** describes seven specific contexts of conflict and war that will engage future joint forces:

- ★ competition and cooperation among conventional powers
- ★ potential challenges and threats
- ★ threats of unconventional power
- ★ proliferation of weapons of mass destruction
- ★ technological change
- ★ battle of narratives
- ★ need for security in urban environments



Air Force Reserve pararescuer scans ravaged Texas landscape during rescue and relief operations following Hurricane Ike

U.S. Air Force (Paul Fipase)



people, information, and trade across borders, a bewildering array of transnational organizations will make their own rules and challenge U.S. interests around the world. These groups will employ niche technologies and present little physical presence, but they will be capable of wreaking havoc far beyond what their small size and limited resources might suggest.

The challenge of conventional and unconventional power will be amplified by the proliferation of weapons of mass destruction, the increasing availability of advanced technologies, and urbanization that blunts traditional U.S. military advantages. Each of these three contexts will make the employment of military force more difficult and more susceptible to surprise as adversaries adapt to the U.S. way of war and apply the fruits of technology in new and innovative ways.

Perhaps the most far-reaching context found within the JOE is the notion that all conflict and military competition will be embedded within a “battle to capture the narrative.” This battle will take place through the global media and across the communications links that tie the world together. Joint force commanders already wrestle with pervasive media presence during their operations. In the future, the joint force will be confronted with a profusion of new media, and each member of the joint force will have a role in reinforcing and amplifying America’s strategic narrative at all times.

### Implications for the Joint Force

A number of important implications flow from this discussion of trends and contexts. These are introduced in the JOE but are further expanded and refined within the CCJO. The first and perhaps most important challenge is that in a world of change, complexity, and uncertainty, the ability to both wage and deter war will be central to wider U.S. security strategy interests. The joint force is the key instrument for these missions. The difficulty facing the joint force today is to understand what mix of human, conceptual, and technical capabilities will address these security challenges at a reasonable cost to the Nation. Today, the joint force faces a period of reconstitution and rebalancing that requires sustained physical, intellectual, and moral effort. The challenge is to build into future joint forces the ability to innovate, be flexible, and adapt as conditions, adversaries, and circumstances shift and evolve.

The ability to innovate in peacetime and adapt during wars requires institutional and individual *agility*. This agility is the product of rigorous education, appropriate applications of technology, and a rich understanding of the social and political context in which military operations are conducted. But above all, innovation and adaptation require

Finally, future adversaries will remain learning, adaptive, and willful actors. The lessons of today, no matter how accurately recorded and then learned, may no longer prove relevant tomorrow because the enemy is human and therefore part of a living organization as well. As we have seen, adversaries are studying the American way of war and will



Refugees gather in internally displaced persons camp, Darfur region, Sudan

UN (Eskinder Debebe)

imagination and the ability to ask the right questions. Adaptation in war provides little time for reflection because of the immediate demands of combat. Here, the patterns of thought developed in peacetime are crucial because adaptation requires the questioning of assumptions with which military organizations have entered the conflict. In

develop methods to challenge our established and often predictable preoccupation with the science of warfare and speedy recourse to precision firepower, materiel, and money as the answer to operational challenges. JOE 2008 provides a stark warning that adversaries may adapt faster than we can unless we develop a force that is intellectually, organizationally,

*patterns of thought developed in peacetime are crucial because adaptation requires the questioning of assumptions with which military organizations have entered the conflict*

the past, military organizations that have ruthlessly examined and honestly evaluated their assumptions in peacetime have done the same in war.

The defining element in military effectiveness in war lies in the ability to recognize when prewar visions and understanding are wrong and must change. The fog and friction that characterize *all* wars make the task of seeing and understanding events extraordinarily difficult. The application of human thought through command and action is the key to success. No technology will lift the fog of war or reduce the friction inherent in the clash of human wills that defines war.

and technologically adaptable. Additionally, the JOE highlights the need for acquisition and personnel policies that are innovative and adaptive enough to “fight through” inevitable surprises.

### Nature of the Future Joint Force

The Chairman of the Joint Chiefs of Staff has described his vision of future joint force operations. This vision is set out in the second element of the joint narrative, the CCJO, which expresses in broad terms the Chairman’s view for how the joint force will operate in response to the wide variety of future security challenges. It describes

the joint force as one of many instruments of national power and sets the enduring national security challenges that will demand its employment. This description provides a backdrop for the central ideas of the CCJO about how the joint force can contribute to meeting national security challenges and advocates a set of common operating precepts that likely will underpin successful future joint operations. Each subordinate joint and Service concept should reflect the vision of the CCJO and take its precepts into account.

The future joint force will face a changed world in which some capabilities, modes of operation, and habits of thought will be less relevant than in the past. The CCJO takes change and complexity seriously. It eschews the idea that the joint force is the only tool through which the President conducts his national strategy and policy. Rather, it will be one part of a whole-of-government effort and one that works best in concert with other instruments of national power. At the highest levels, the CCJO describes a future joint force that will remain engaged in the tasks of winning the Nation's wars, deterring potential adversaries, developing cooperative security approaches with friends and allies, defending the homeland, and responding to civil crises. These challenges will be enduring products of the political environment from today through the 2030s. Each of these challenges, however, will exhibit new features based on the character of change, complexity, and uncertainty.

The CCJO describes the imperative that will require the joint force to be as adaptive as potential adversaries while creating unique asymmetries that force the adversary to react. Furthermore, the future joint force will have to find balance between winning major wars against the less likely, but perhaps more dangerous, conventional adversaries while growing the capability to fight and win against irregular adversaries who are far more likely to attack the United States. The CCJO emphasizes the need to balance these competing imperatives, helps to define the nature of some of the tensions, and even provides some guidance on how to do this, but each such decision will have to be the product of detailed and thoughtful analysis. Each national security challenge presents its own unique set of imperatives, which will be further explored and elaborated in subordinate concepts.

To avoid war, the United States will require capabilities to deter and dissuade

adversaries from taking actions contrary to our interests. In order to ensure the credibility of deterrence, the joint force must have a role in developing cooperative security arrangements to "harden" the global security framework that is threatened. Part of the maintenance of this security framework is to employ joint forces to respond to civil crises that may disrupt civil society and international peace. The ultimate obligation of U.S. joint forces is to defend the homeland. The joint force is engaged around the world to ensure that U.S. sovereignty, territory, domestic population, and critical infrastructure are protected against external threats. This mission requires considerable interagency cooperation and integration. The future joint force must be prepared to meet any of these challenges, finding an appropriate balance in the process since preparing for one does not necessarily prepare the joint force for another.

altogether counterproductive. The joint force commander will have to think through the ultimate nature of the situation and define and question assumptions along the way. Planning must imbed broad political and resource limits within which operations might be conducted.

The second major idea is to conduct and integrate a combination of combat, security, engagement, relief, and reconstruction activities according to a concept of operations designed to meet the unique circumstances of the situation. Most joint operations will require some combination of two or more of these broad categories of military activity, which in total embrace virtually every mission a joint force could be called on to perform. Operational art thus becomes the arranging and balancing of these activities to achieve the objectives of the joint operation or campaign—and their continual rearranging as that operation or campaign unfolds. Thus,

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*the core of any operating concept is the fundamental description of how the force will resolve the military problem that has been set out*

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### **Future Joint Operations**

The core of any operating concept is the central thesis, the fundamental description of how the force will resolve the military problem that has been set out. It is the Big How, the "concept of the concept." In the case of the CCJO, it is a single concept for how joint forces will meet any or all of the national security challenges described above. The central thesis of the CCJO comprises three inter-related ideas that together describe broadly how joint forces will operate. Together, these three ideas portray a process of operational adaptation designed expressly to cope with the complexity, uncertainty, and change that the JOE identifies as the defining features of the future operating environment. This process applies to all joint operations, even though the specific ends, ways, and means of those operations may vary widely according to the situation.

The first idea is to address each situation on its own terms, in its unique political and strategic context, rather than attempting to fit the situation to a preferred template. In a world of change, complexity, and uncertainty, the underlying causes of any situation may not be obvious, and "off the shelf" solutions may be inadequate or

for every operational situation, the joint force commander will have to develop a concept of operations that integrates—and reconciles—the frequently competing demands of each broad category of military activity.

The third major idea is to conduct operations subject to a continuous assessment of results in relation to expectations, modifying both the understanding of the situation and the conduct of subsequent operations accordingly. Because of the complex, uncertain, and changing characteristics of the environment, any initial operational design, no matter how carefully conceived, is likely to prove inadequate in some respects. The plan must therefore incorporate specific means of continuously reevaluating the fundamental assumptions on which that plan is based.

The CCJO goes on to identify 10 broad precepts of action that it proposes will underlie all successful future joint operations. All flow logically from the conditions and challenges described earlier in the CCJO. Although none is fundamentally new, the emphasis each receives and how it is implemented in the future may change. Subordinate joint operating concepts will apply these precepts in greater detail to more specific situations.

## What's Next?

The JOE and CCJO articulate the joint narrative at the most fundamental level and will be used to inform and guide the contents of the library of joint operating concepts, joint integrating concepts, and joint doctrine. Underpinned by the enduring themes and fundamental principles about the nature of warfare and joint operations found in the JOE and CCJO, the library of joint publications will “flesh out” the details of the joint narrative.

The emerging joint narrative should provide a compelling common framework for military professionals for thinking about joint

operations, describe a future operating environment tailored to the joint force, describe future joint operations for policymakers and others, establish a conceptual foundation for subordinate concepts, and guide experimentation in joint operations and capabilities.

The intention is to further develop and expand this dialogue with a wider array of partners over the coming year. USJFCOM, together with the Services, other combatant commanders, and interagency and multinational partners, will further explore and refine the ideas of the JOE and CCJO in a series of collaborative wargames and seminars leading up to the capstone event in this effort, the

CCJO Experiment, held simultaneously in Suffolk, Virginia, and Washington, DC.

The body of work developed through the joint narrative should also influence the Department of Defense (DOD) Analytic Agenda and Defense Planning Scenarios. This effort is focused on the difficult challenge of ensuring that defense acquisition is properly focused on anticipating future national security challenges. The JOE plays an important role in informing the larger contexts and wider international environments in which the DOD Planning Scenarios' more specific analytic wargames could be embedded. The CCJO will influence the concepts of operations by which joint forces are employed in wargames and studies across the span of the DOD analytic agenda.

The ideas found within the JOE and CCJO were developed with an eye toward defining the operational constructs of a balanced joint force that is capable of making the adaptations and adjustments necessary to prevail in the face of inevitable surprise. Indeed, the ultimate objective of the JOE and CCJO is to assist in understanding and recognizing key military challenges in the future, and how the joint force must respond given this vision.

Building the optimum joint force will require tough choices. Our resources are not unlimited and nobody has a crystal ball to see the future. We also can expect our enemies to continue to study us, learning and adapting so they can challenge our vulnerabilities. We must be prepared to out-study the enemy, using our knowledge and creativity to imagine ways to checkmate his logic.

Again, as Secretary Gates made clear, balance will be the guiding principle behind our efforts to prepare for an uncertain future. Balance will enhance the agility and effectiveness of the joint force across the spectrum of warfare as we work to make irregular warfare a core competency. As the emerging joint narrative captures these ideas, connecting our best vision of the future with joint concepts and doctrine, it will serve to enhance the long-term security of our nation. **JFQ**

## NOTE

<sup>1</sup> See Fareed Zakaria, *The Post-American World* (New York: W.W. Norton, 2008); or Robert D. Kaplan, “America’s Elegant Decline,” *The Atlantic* (November 2007).



Marine walks through alley during operations to capture suspected antioalition forces near Methar Lam, Afghanistan

**The Capstone Concept for Joint Operations** proposes that these precepts will underlie future joint operations:

- ★ achieve and maintain unity of effort within the joint force and among the joint force, U.S. Government, and international and other partners
- ★ plan for and manage operational transitions over time and space
- ★ focus on operational objectives whose achievements suggest the broadest and most enduring results
- ★ combine joint capabilities to maximize complementary rather than merely additive effects
- ★ avoid combining capabilities where doing so adds complexity without compensating advantage
- ★ drive synergy to the lowest echelon at which it can be managed effectively
- ★ operate indirectly through partners to the extent each situation permits
- ★ ensure operational freedom of action
- ★ maintain operational and organizational flexibility
- ★ inform domestic audiences and influence the perceptions and attitudes of key foreign audiences as an explicit and continuous operational requirement



# Getting Indonesia Right

## Managing a Security Partnership with a Nonallied Country

By JOHN B. HASEMAN *and* EDUARDO LACHICA

Indonesia's spectacular transformation from the Suharto years to the vibrant democracy of today is one of the great success stories in democratic change in recent history. The change began in May 1998 when—after more than 30 years of the Suharto autocracy—a combination of economic woes, an angry populace, and political pressure from military leaders and civilian cronies forced Suharto to step down. Since then, Indonesia has changed with incredible speed to become the most democratic nation in Southeast Asia.<sup>1</sup>

The results of Indonesia's 2005 and 2009 parliamentary and presidential elections are noteworthy, particularly when compared with the United States, where getting out more than 50 percent of the electorate is considered a “high turnout.” As noted by the Indonesia country director of the Asia Foundation:

*In 2004, more Indonesians voted in more elections and for more different candidates—and more peacefully—than any other country's citizens, anywhere in the world. In fact, Indonesians actually complained that voter turnout*

*“dropped” from the world's highest in a free society (over 90 percent in the 1999 elections) to about 75 percent in 2004 (still one of the world's highest voter turnout rates). A culture of democracy has not only taken root in Indonesia, but begun to flourish, in ways often not seen in supposedly “mature” democracies.<sup>2</sup>*

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Indonesian Defense Forces commander escorts ADM Mullen during arrival ceremony in Jakarta

DOD (Chad J. McNealey)

The importance to the United States of a strong security relationship with Indonesia is beyond question. Indonesia is one of three littoral states on which America and other trading nations depend for the safety of navigation in the Strait of Malacca. It is a key partner in Southeast Asia in combating terrorism, the trafficking of persons and drugs, and other transnational crimes. Indonesia has returned to the front stage in political leadership in the Association of Southeast Asian Nations (ASEAN). It has also become a voice for moderation in the Middle East, independent from but effectively supportive of U.S. peacemaking efforts.

Since 2005, the United States has sought to rebuild a cooperative relationship with Indonesia's security elements—the Indonesian national police and the Indonesian armed forces (*Tentara Nasional Indonesia* [TNI])—that had been seriously degraded by 15 years of punitive U.S. congressional sanctions. The rebuilding effort began with military-led relief operations after the tragic December 2004 tsunami in Aceh that killed almost 200,000 Indonesians, and was greatly enhanced by the spirit that led to a political solution to the longstanding insurgency in Aceh.

U.S. policy since then has resumed programs to train Indonesian military personnel, has reengaged contacts up to the highest level of government and military leadership, and has broken new ground for cooperation in disaster relief, international peacekeeping, counterterrorism, maritime security, and other areas. But full normalization of the relationship has yet to be achieved because of continued restrictions, capriciously applied, and the demoralizing effect of a new

cycle of legislative restrictions on military ties. "We have yet fully to instill trust between our governments," a U.S. diplomat remarked. "Without that trust there is too much potential for misunderstanding."<sup>3</sup>

The Obama administration is fortunate to inherit a security partnership with Indonesia that needs only an extra push to be acclaimed a foreign policy success. It is starting out with some effective working assets. Indonesian officers are returning to U.S. military schools in appreciable numbers, and U.S. officers are enrolled in all of Indonesia's command and staff schools. Intelligence exchanges have been revived. These are encouraging signs that the militaries have started to restore networks of professional

more effective law enforcement that serves our interests in fighting terrorism, drug trafficking, people smuggling, and other transnational crimes. Still, the Obama administration should not forget how poor and unproductive the relationship had been all through the 1990s and until only a few years ago.

### Shortsighted Sanctions

What began the restoration of effective military relations was the Bush administration's November 2005 waiver of congressional restrictions against U.S. assistance to the TNI. Those sanctions, principally authored by Senator Patrick Leahy of Vermont, were intended to punish the Indonesian army for the shooting of defenseless civilians in East

*the Obama administration is fortunate to inherit a security partnership with Indonesia that needs only an extra push to be a foreign policy success*

friendships with open communication lines that can make seamless interoperation possible. The number of security cooperation events—bilateral and multilateral exercises, official visits, conferences—was well over 100 in 2008, although the pace could slow down in 2009 because of TNI resource limitations.

U.S. assistance is helping the Indonesian national police efforts to transform itself from the nation's least trustworthy public institution to a potential model for security sector reform. The United States has been paid back in many ways, particularly in

Timor in 1991, and for supporting militia violence that swept across the Indonesian province just before and after the August 1999 referendum on its future status sponsored by the United Nations (UN). These measures were intended to assert the primacy of human rights in U.S. foreign policy. However, by the start of the millennium, the embargo had all but lost its relevance. The TNI had already undertaken major self-reforms, which took the military out of politics for the first time in its existence.



DOD (Jerry Morrison)



DOD (Joshua J. Wahl)

Above: U.S. Navy officer and Indonesian armed forces officer speak with patient during medical and dental civic action program

Left: Secretary Gates and Indonesian president meet at presidential palace in Jakarta



At the same time, Indonesia was emerging as the region's most vibrant democracy.

The spanking was aimed principally at the Indonesia army, which was believed responsible for the human rights abuses in East Timor. But the punishment hurt the air force and the navy, which had little involvement in these actions, the most. They were denied replacement parts for their aging fleets of aircraft and ships. This drastic loss of capability was exposed in the horrific consequences of the 2004 Aceh tsunami. For lack of spare parts, the Indonesian air force could not get many of its C-130 transport planes flying again in relief of the disaster survivors.

In the 4 years since the end of the U.S. military embargo, Indonesia on its own volition has stepped up cooperation with the United States on a number of common security concerns. The TNI has returned to international peacekeeping, after almost a decade of virtual inactivity in this field, with the encouragement and financial support of Washington. The TNI is now preparing for its third year of a battalion-size deployment with the UN Interim Force in Lebanon. The Indonesian police is also expanding its contribution to UN peacekeeping, its latest being the dispatch of 140 officers to Darfur. The

greatest dividends for the United States have been in the counterterrorism front. Even at the risk of angering Islamic front groups, Indonesian authorities have captured or jailed more than 400 mostly Muslim individuals suspected of terrorist leanings, and all but neutralized the Jemaah Islamiyah extremist group as an imminent danger to Indonesian society and the region.

At the same time, renewed engagement with the TNI is meeting another important objective of U.S. policy: the reform and professionalization of Indonesia's security sector. The gains are more pronounced in the police than in the armed forces because the former, separated from the TNI since 1999–2000, has been more motivated to clean up its image and make use of foreign assistance. One U.S. Department of Justice program is training the police to adopt use-of-force standards that are as high as any observed by Western law enforcement agencies. The TNI lags behind because withdrawing from politics, which it did on its own early in this decade, was the easy part. It would take a government-wide shakeup and more fiscal resources than Jakarta can currently muster to take the further steps of dismantling the army's territorial commands and their built-in sources of off-budget funds. That President Susilo Bambang Yudhoyono and the parliament have been slow to act suggests that there is less public interest in further high-cost reforms in the military than there is in poverty reduction, job creation, and other more urgent economic issues.

### High-maintenance Relationship

The Obama national security team should understand first of all that this is not an easy relationship to manage. The President is rarely directly involved in making policy for Indonesia, and the Secretaries of State and Defense are infrequent visitors to the region. This puts most of the burden of stewardship on time-stressed subcabinet and midlevel officials in Washington, who have other responsibilities to look after, and on the civilian and military diplomats in Jakarta who have to put the show together. This is less grand strategy than hands-on enterprise and improvisation at the operational level. To the credit of

the U.S. Embassy Country Team in Jakarta, it has improvised well. One of its legacy programs in maritime security is a chain of radar stations along the entire length of the Strait of Malacca and a similar surveillance system for the Makassar Strait. The Country Team got the program going from various pots of money in the State Department and Justice Department, tapping as well into so-called Section 1206 money, named after a provision of the National Defense Authorization Act that allows the Pentagon to use these funds to assist other countries in counterterrorism, stabilization and reconstruction, humanitarian relief, and other nontraditional missions.

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*renewed engagement with the Tentara Nasional Indonesia is meeting another important objective: the reform and professionalization of Indonesia's security sector*

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The Country Team had to overcome fierce rivalries between the Indonesian military and the police to make these programs work as Washington intended them. The United States and Indonesia have different priorities when they talk of maritime security. The Indonesian navy wanted some of the radar stations deployed further east so that they could help catch Chinese and Vietnamese fishing fleets poaching in the Arafura and Timor Seas. It took some skillful diplomacy to persuade the navy to accept the Makassar Strait locations, where they can watch out for pirates, drug-runners, and the movement of terrorists between Indonesia and the Philippines.

### Winning Over the Nonaligned

The challenge for the Obama administration is the same one that the Bush administration took on: how to make willing and effective security partners of nonallied countries that are nevertheless friendly and capable of acting in support of U.S. objectives. This in essence defines what the United States should do to achieve its security objectives in Southeast Asia—and is an example for pursuit of security objectives elsewhere in the world.

All but two ASEAN members are nonaligned countries whose regard for the United States ranges from friendly to much less so. Singapore is arguably now the most valuable of the near-allies, and the United States should

U.S. Air Force (Marilyn C. Holliday)



U.S. Air Force pararescueman trains members of Indonesian air force special forces corps in rescue techniques



be thankful that this tiny but economically muscular island state has come aboard virtually on its own volition. Indonesia is a harder sell, but the Bush administration made a bet that before too long, this country could become the region's unquestioned leader and its strongest voice for democratic governance. The Obama administration should follow up with robust efforts to improve upon the relationship.

A little-noticed aspect of the Bush diplomacy was its play for the active support of key members of the community of nonaligned nations. Indonesia, of course, is no longer the strident voice of the Non-Aligned Movement (NAM) that it was in Sukarno's time; nor does the NAM have anything close to the influence it had during the Cold War, when it could affect the balance of power between the Western allies and the Soviet bloc. Yet in the changed landscape of the early 2000s, the Bush administration recognized the increasing weight of the movement's two most prominent democracies, India and Indonesia, in determining questions of peace and stability in their respective regions. The difference in the way that the United States has behaved toward its treaty and nontreaty partners has blurred to some degree, sometimes to the irritation of its treaty allies.

It is hard to imagine President Obama, having spent 4 years of his childhood in Jakarta, being anything but inclined to make that bet his own. He can learn from the previous administration's experience in managing a nontreaty security relationship. The Bush

team did not try to impose its wishes on Indonesia, for that would not have worked in any case. It was more successful allowing Indonesia to pursue its "free and active" foreign policy in directions where the interests of the two countries intersect or at least do not collide. For this kind of diplomacy, success is measured not so much in what Indonesia does but what it does not do.

Despite strong public opinion against America's conduct of the Iraq War or its moves to sanction Iran on charges of nuclear proliferation, Indonesia did not use its nonpermanent seat in the UN Security Council to block either of these actions. On the issue of pressuring Burma into restoring the rights of democratic opponents, Indonesia actually stood closer to the U.S. position than to that of many of its fellow ASEAN members. It was no surprise President Yudhoyono called President Bush "one of the most pro-Indonesian American presidents in the history of our bilateral relations." Even though they did not always agree, the Indonesian president said in Washington in November 2008 that the two leaders sought to "advance our relations, seek new opportunities and resolve outstanding issues with a constructive spirit."<sup>4</sup>

In Southeast Asia, the United States already treats Indonesia on a par with, if not in some respects better than, its two treaty allies, the Philippines and Thailand. In terms of U.S. economic and security assistance in fiscal year 2008, Indonesia received a good deal more (\$152 million) than either of the

two U.S. allies. Indonesia's lion's share can be justified by the sheer size of its population and its comparative needs alone, but it probably reflects other geopolitical calculations as well.

Both the Philippine and Thai alliances are showing their age (the first dates back to just after World War II and the second to the Vietnam War), and how much more value the United States can wring from them is a legitimate question. Both allies now suffer from severe domestic political problems: Thailand from a long-running social and political schism between pro- and anti-government factions, and the Philippines from successive challenges

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*for the relationship to succeed, some Indonesian elites have to outgrow their prickly nationalism and paranoid attitudes toward Western powers*

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to the legitimacy of its president. Both countries have suffered from a series of military coups or coup threats. By contrast, the Indonesian partnership is fresher, its full potential is yet to be tapped, and there has never been even the hint of a military coup in Indonesia. The major security projects of the day—fighting political and religious extremism, creating dependable regional security architecture, and proving that Islam and democracy can profitably coexist—make Indonesia as valuable a partner for the United States as any of its treaty allies in Southeast Asia.

### Partnership of Respectful Equals

The U.S.-Indonesia security partnership will work optimally only if it is conducted on the basis of mutual respect and equality. U.S. policy should continue to champion human rights, but it should recognize and give credit for Indonesia's efforts to improve on its record. With Abu Ghraib, Guantanamo Bay, renditions, and tragic violence against civilians in Iraq and Afghanistan on its own record, how can the United States hector other countries on proper military behavior with a straight face? It is true that the question of TNI accountability for the East Timor violence remains unsettled judicially. It is also a historical fact that this tragedy is now a full decade in the past. The Indonesia-Timor Leste commission that investigated the matter found the Indonesian military responsible but had no authority to prosecute the culpable individuals. But the



Marine instructs troops from participating nations, including Indonesia, on airfield security during exercise Cobra Gold, Thailand

U.S. Marine Corps (Christopher J. Gallagher)

commission's final report clearly shows the desire of both countries to move on to other concerns. There may be no better alternative for U.S. policymakers but to do likewise.

For the relationship to succeed, some Indonesian elites have to outgrow their prickly nationalism and paranoid attitudes toward Western powers. A report that the Indonesia Attorney General's Office was investigating the publication of Tim Weiner's Pulitzer Prize-winning Central Intelligence Agency history on suspicion that it is "part of a foreign conspiracy" to destabilize the country raises questions about the political maturity of some of Jakarta's bureaucrats. Indonesia's history explains a good deal about why it is still a psychologically fragile and economically insecure country. The bright spot here is that Indonesia also has a modernizing elite—epitomized by President Yudhoyono and his immediate political family. To them, Indonesia is no longer a poor, victimized country but a potentially strong one with an obligation to pull its weight in the community of nations.

If human rights may be yesterday's news, so may be terrorism as the defining factor in U.S. Indonesia policy. It is not that the terrorism threat has been vanquished; the recent Mumbai terror attacks warn against complacency. But Jakarta's attention, like that of other Southeast Asian capitals, is turning to other nontraditional threats such as food security, public health security, and energy security, or economic or humanitarian security in general. This should be a cue for the United States to align its security programs more closely to the region's security concerns.

### Economic Security

The Bush administration had already begun to shift some resources to other nontraditional missions such as natural disaster preparedness, resources protection, and, as mentioned above, maritime security and international peacekeeping. The new team would do well to continue the work of capacity-building in these fields. There are multiple agencies involved in the resources protection mission, including the army, navy, and maritime and fisheries department. This mission is primarily of a domestic nature but one aspect of it—illegal logging—has international ramifications and has drawn the attention and support of U.S. environmental groups. A U.S. program strengthening enforcement of laws and regulations against illegal logging could mitigate the country's economic losses

as well as improve the capabilities of its law enforcement services. It also is likely to gain the support of U.S. environmental advocacy groups and their supporters in Congress.

The U.S. Congress should see to it that programs of high strategic value started in the Bush administration—the maritime surveillance system, for example—are sustained through continued funding. The drawing of the Pentagon's Section 1206 funds as a means of avoiding possible scrutiny by unsupportive congressional appropriators might have been justified in a few urgent cases, but there is no conceivable need for gaming the system like this with both Congress and the executive branch in Democratic hands. The next requests for security assistance should be made through conventional programs such as Foreign Military Financing or Foreign Military Sales. A transparent process of presenting and defending these programs in open congressional hearings will be healthy for the relationship.

The enormous strain on U.S. fiscal resources could cause sharp across-the-board cuts in foreign assistance budgets. But that would not necessarily constrain continued engagement with Indonesia. Ideally, it should be people-intensive rather than dependent on large amounts of foreign aid. Doubling the amount of International Military Education and Training grants for the TNI, for instance, would cost only \$1.5 million, but could have a far greater return in terms of the quality of the military relationship. Some of the best ideas for solidifying the relationship, such as bilateral "retreats" for foreign affairs and defense legislators from both sides, are easily affordable. Above all, the United States needs more mission-dedicated, language-capable civilian and military diplomats working in the field.

Indonesia has signed strategic partnership agreements with nearly a dozen countries including Russia, China, Australia, Japan, Pakistan, South Korea, Poland, and Germany, but has yet to sign one with the United States. However, Indonesia's "all-direction diplomacy" has not been an unnecessary burden for the United States. The fact that Australia is high up on that list of partnerships should give the United States comfort. The Australians are prepared to provide Indonesia with far higher levels of foreign assistance than the United States. Much of this assistance is in educational exchanges, environmental projects, and other areas that Washington would equally support if it had the appropriations for it.

Russia's reemergence as a major arms supplier will be of little consequence while Indonesia continues to defer the acquisition of major weapons systems. China's promise of sharing defense technology has so far produced only a single joint rocket development project of little utility to TNI's nontraditional missions. Defense Minister Juwono Sudarsono's priorities of improving multipurpose airlift and sealift leave the door open for the United States to continue to upgrade Indonesia's fleet of C-130 transport planes. The United States can also assert its strength in communications and defense electronics in this still-limited arms market.

President Yudhoyono is eager to start a dialogue with the Obama administration. In his November 2008 Washington speech on U.S.-Indonesian relations, President Yudhoyono left a strong hint of what he thinks a U.S.-Indonesia strategic partnership should be: It has to be based on an "equal partnership and common interest . . . a force for peace, stability and cooperation in the international system. And it has to respect Indonesia's independent and active foreign policy, where there is always room for both sides to agree to disagree."<sup>5</sup> The Obama administration can hardly disagree with any of these terms; these are fully compatible with the President's own aspirations. During her February 2009 visit to Jakarta, Secretary of State Hillary Clinton confirmed U.S. agreement with President Yudhoyono's call for a "comprehensive partnership" between the two countries. The administration could turn this relationship into an early foreign policy success if it approaches Indonesia with an open mind and a willingness to be creative. **JFQ**

### NOTES

<sup>1</sup> Walter Lohman, "Guidelines for U.S. Policy in Southeast Asia," Backgrounder #2017 (Washington, DC: The Heritage Foundation, March 20, 2007).

<sup>2</sup> Douglas E. Ramage, Representative to Indonesia and Malaysia, The Asia Foundation, statement to the Committee on International Relations, Subcommittee on Asia and the Pacific, U.S. House of Representatives, March 10, 2005, available at <[http://commdocs.house.gov/committees/intlrel/hfa99826.000/hfa99826\\_0f.htm](http://commdocs.house.gov/committees/intlrel/hfa99826.000/hfa99826_0f.htm)>.

<sup>3</sup> Interview, Jakarta, July 2, 2008.

<sup>4</sup> President Susilo Bambang Yudhoyono, "Indonesia and America: A 21<sup>st</sup>-Century Partnership," speech delivered to U.S.-Indonesia Society luncheon, Washington, DC, November 14, 2008.

<sup>5</sup> Ibid.

# The Enduring Value of NORAD

By VICTOR E. RENUART, JR.

*[Canada and the United States] are good neighbors and true friends because we maintain our own rights with frankness, because we refuse to accept the twists of secret diplomacy, because we settle our disputes by consultation and because we discuss our common problems in the spirit of the common good.*

—Franklin D. Roosevelt, August 1938

Gen Renuart speaks at NORAD  
50<sup>th</sup> Jubilee, May 12, 2008

DOD (Cherie Cullen)





**T**he armed forces of Canada and the United States are completing a historic commemoration.

Just over 50 years ago, our two nations signed the Agreement for the North American Air Defense Command (NORAD), which established a binational command to provide air defense against the Soviet bomber threat. For five decades now, we have ensured the aerospace sovereignty of North America. Since September 11, 2001, NORAD (now the North American *Aerospace* Defense Command) has refocused its mission to include defense against surprise and internal threats. With this new threat in mind, in May 2006, Canada and the United States added maritime warning as a NORAD mission.

Recognizing the broader aspects of the 21<sup>st</sup>-century security environment, our two nations are now assessing opportunities for enhanced military cooperation among the commands charged with defending our home territory. Our leaders have repeatedly underscored the importance of international cooperation for homeland defense and security. In the spirit of a neighborhood watch, Canada and the United States have a great opportunity to create a set of new relationships that build on the strengths and benefit from the challenges of earlier times. By changing the lenses we have looked through for generations, we can develop processes and procedures to reduce the geographical, interdomain, interagency, and intermodal gaps that currently exist in our defenses.

There are a number of ways to address these new relationships. Whichever approach we take must acknowledge all members as equal partners. That approach must also respond to changing conditions and adapt to the possibility of new participants. In that light, this article offers a retrospective on NORAD, looks at the relevance of NORAD today, and suggests an outline of considerations for future enhanced military cooperation between Canada and the United States in the defense of our neighborhood. These considerations, now in parallel with a Chief of Defence Staff (CDS) and Chairman of the Joint Chiefs of Staff (CJCS)-directed study, are not presented as all-inclusive or exhaustive, but rather reflective of the potential that exists.

**General Victor E. Renuart, Jr., USAF, is Commander of North American Aerospace Defense Command and U.S. Northern Command.**

## History of Cooperation

The modern story of defense cooperation between our two countries extends back to World War II, when the threat of German and Japanese incursion into Alaska and the Maritime Provinces brought the United States and Canada together. In August 1940, President Franklin Roosevelt and Prime Minister Mackenzie King issued the Ogdensburg Declaration, which voiced the concept of joint defense and sanctioned the establishment of the Canada-U.S. (CANUS) Permanent Joint Board on Defense. At the war's end, collective security for continental defense remained of vital interest to both nations, and in February 1947, Ottawa and Washington announced the principles of future military cooperation, including consultation on air defense issues.

The growth of Soviet long-range aviation in the late 1940s, and the test of a Soviet atomic bomb in 1949, brought Canada and the United States under direct threat of nuclear attack for the first time, encouraging even closer cooperation in continental defense.

In the early 1950s, the two nations agreed to construct a series of radar stations across North America. The first undertaking was the Pinetree Line in 1954. By 1957, a Mid-Canada Line or McGill Fence was completed about 300 miles north of the Pinetree Line. The third and most challenging joint air defense undertaking of the 1950s was the construction of the Distant Early Warning Line (DEW Line), a transcontinental line along the 70<sup>th</sup> parallel, about 200 miles north of the Arctic Circle.

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*in February 1947, Ottawa and Washington announced the principles of future military cooperation, including consultation on air defense issues*

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This three-tiered radar defense line now gave our population centers 2 to 3 hours warning of bomber attack, sufficient time to identify and intercept enemy aircraft. Should the enemy have attempted to circumvent the three lines and approach from either the Pacific or Atlantic Oceans, they would have encountered offshore barriers composed of airborne early warning aircraft, Navy picket ships, and offshore radar platforms called Texas Towers.

Since the operation of this network required daily coordination on tactical matters and the merging of plans to a greater extent than ever before, the logical next step

was to establish a formal structure for operational control. To that purpose, in 1951, the Royal Canadian Air Force (RCAF) placed a liaison group at Ent Air Force Base, Colorado, home of the U.S. Air Force Air Defense Command, to carry out planning. Soon it became obvious that the most effective air defense required common operating procedures, deployment according to a single plan, means for quick decision, and authoritative control of all weapons and actions.

In the spring of 1954, the RCAF Chief of the Air Staff, Air Marshal C. Roy Slemon, and the head of the Air Force Air Defense Command, General Benjamin Chidlaw, met to discuss the best means for providing defense for North America. On the basis of these talks, their staffs prepared a plan that called for a combined air defense organization under a single commander. In late 1954, General Earle E. Partridge, commander of the newly formed joint U.S. Command, Continental Air Defense Command (CONAD), directed another detailed study of North American defense issues. The results again pointed to the establishment of a combined air defense organization.

On August 1, 1957, the United States and Canada announced the establishment of an integrated command that would centralize operational control of all air defenses. On September 12, NORAD operations commenced at Ent Air Force Base, with General Partridge named as commander and Air Marshal Slemon as his deputy. Eight months later, on May 12, 1958, the two nations signed

the formal NORAD Agreement. NORAD now commanded both Canadian and U.S. air defense forces, which included Canadian Air Command, Air Force Air Defense Command, Army Air Defense Command, and Naval Forces CONAD/NORAD.

The next several years saw a dramatic growth in air defenses. By the early 1960s, a quarter of a million Canadian and U.S. personnel operated a multilayered and interlocking complex of sites, control centers, manned interceptors, and surface-to-air missiles.

During the 1960s and 1970s, the character of the threat changed as the Soviet Union focused on deploying intercontinental and

sea-launched ballistic missiles, while developing an antisatellite capability. In response, the command developed a space surveillance and missile warning system to provide worldwide space detection and tracking and to catalogue objects and activity in space. When these systems became operational during the early 1960s, they came under the control of the NORAD commander. Over the years, the evolving threat broadened the NORAD mission to include tactical warning and assessment of a possible air, missile, or space attack on North America. The 1975 NORAD Agreement acknowledged these extensions of the command's mission, and the 1981 agreement changed the command's name from the North American Air Defense Command to the North American Aerospace Defense Command.

Economic moves begun in 1963 caused the reduction of aircraft fighter-interceptor forces and closed portions of the land-based radar network; however, there were improvements that helped reduce the vulnerability to intercontinental ballistic missile attacks. Two hardened underground combat operations centers were set up: one inside Cheyenne Mountain near Colorado Springs, and an alternate center at North Bay, Ontario. These facilities became the nerve centers for integration and assessment of data gained from the broad network of early warning systems being established.

In May 1979, Congress directed the U.S. Air Force to prepare a blueprint for modernization of air defenses and cost-sharing discussions between Canada and the United States. The main features of the modernization programs

that followed were the replacement of the DEW Line radar system with an improved Arctic radar line called the North Warning System; the deployment of Over-the-Horizon Backscatter radar; the assignment of F-15s, F-16s, and CF-18s to NORAD; and the greater use of Airborne Warning and Control System aircraft.

The end of the Cold War brought major changes for the command. NORAD again reassessed its mission and refocused its resources to meet emerging threats. In 1989, Congress assigned the Department of Defense a role in the U.S. counterdrug effort. With Canadian ratification of the counterdrug mission, NORAD operations expanded to include tracking small-engine aircraft, then the primary means of smuggling drugs. The command also developed procedures to coordinate its counterdrug activities with Canadian and U.S. law enforcement agencies. These efforts demanded the utmost diplomacy as the command delved into delicate civil and diplomatic areas not traditionally included in day-to-day military affairs.

*the command developed procedures to coordinate its counterdrug activities with Canadian and U.S. law enforcement agencies*

On May 12, 1996, the renewal of the NORAD Agreement prepared the command for the next century with a commitment to maintain NORAD as the cornerstone of

CANUS post-Cold War national security. Five years later, in 2001, NORAD senior leaders were deep into assessment of how the command should meet future challenges when the playing field suddenly changed.

Responding to the tragedy of September 11, NORAD has increased its visibility and significance as a partner in the national security of Canada and the United States. One major example is the continuous fulfillment of responsibilities associated with Operation *Noble Eagle*, which include:

- monitoring and intercepting flights of interest within the continental U.S. and Canadian territory
- flying air defense missions for our nations' leaders, national special security events such as the Group of Eight summits, North American Leadership Summit, Republican and Democratic National Conventions, Olympics, and large sporting events such as the Super Bowl
- conducting city and critical infrastructure air patrols
- assuming responsibility for integrated air defense over the U.S. National Capital Region
- providing interior radar and radio coverage developed through enhanced inter-agency cooperation with NAV Canada, Transport Canada, Royal Canadian Mounted Police, Federal Aviation Administration, Transportation Security Agency, and Department of Homeland Security
- employing improved rules of engagement.

Looking back over the past 50 years, it is evident that NORAD has served as a credible deterrent to any aggression that might threaten North America, continually adapting to the changing strategic environment. Advances in technology have reduced the requirement for large numbers of personnel and air defense resources, but NORAD today remains the most formidable aerospace defense capability in the world.

### Strategic Environment

Since the turn of the century, the overall threat to the North American continent from the aerospace, space, land, sea, and cyber domains has greatly increased, and the proliferation of weapons of mass disruption and their delivery systems to state and nonstate actors has emerged as a major security chal-



Canadian National Defence Minister, Gen Renuart, and Secretary Gates cut ribbon for NORAD's new command center

DOD (Cherie Cullen)

lenge. This evolution has introduced asymmetric threats that have the potential to affect the decisionmaking processes associated with the defense of North America. Additionally, the proliferation of cruise missile technology, unmanned aerial systems, and nonmilitary air activity associated with drug trafficking and other illegal activities is of continuing concern.

Domestically, the overall volume of daily air traffic flowing to, from, and within our airspace will continue to expand and dictate an even higher degree of coordination between our national airspace surveillance and control systems and military components. Additionally, cyber security and the wide range of threats to our continent coming from the seas and major waterways will pose significant challenges. Finally, our vast and open borders, including a more accessible Arctic, will require both a closer level of cooperation between land and maritime forces and facilitation of military-to-military defense support to civil authorities.

### Back to the Future

In response to this dynamic environment, there are three commands immedi-

ately responsible for the defense of North America: NORAD, U.S. Northern Command (USNORTHCOM), and Canada Command (Canada COM). The CANUS Basic Defense Document requires the commanders to establish close relationships with each other and with supporting agencies, ensuring a timely and coordinated response to threats to Canada and the United States. With that in mind, the CDS and CJCS requested the commanders of NORAD, USNORTHCOM, and Canada COM to develop options for the way ahead in their relationship. Since that meeting in July 2006, the three commands have been working closely to study and improve their understanding of each other's roles, missions, and responsibilities with the aim of eliminating gaps and redundancies, while strengthening daily military cooperation in the defense of North America. As a previous deputy commander observed, the Tri-Command Study promises to be one of the most important things we do in the next 10 years.

While respecting national sovereignty, the study focuses on strengthening the Canadian and U.S. Armed Forces' ability to:

- act in a timely and coordinated fashion
- identify, deter, disrupt, and defeat threats to Canada and the United States in all domains, in concert with their inter-agency partners
- provide timely, effective, and efficient support to civil authorities as directed.

In examining future options for increasing military cooperation in defense of North America, a number of assumptions come into play:

- An attack on one country is an attack on the other and will have economic, defense, and security implications.
- The nations believe it advisable to expand military-to-military cooperation.
- Enhanced military cooperation will increase the layered defenses of all participants.
- Improving coordination and reducing seams along borders and among domains will improve the defense and security of all participating nations.
- Increasing decision time will provide decisionmakers a greater ability to respond to threats.
- Current policies do not prevent expansion of military cooperation.

*the Tri-Command Study promises to be one of the most important things we do in the next 10 years*



U.S. Air Force (Shawn Weismiller)

Canadian Air Force C-17 prepares to evacuate people from New Orleans as Hurricane Gustav approaches, August 2008



■ Differing international perceptions of the value and difficulty of cooperation with U.S. forces will influence the effectiveness of enhanced military cooperation.

■ A change to NORAD is a politically sensitive topic.

■ Canadian forces may provide a successful conduit for military cooperation with other nations.

■ The lines between security and defense have become blurred.

■ The concept of CANUS military cooperation is as relevant today as it was during the Cold War and offers a strong foundation for the defense of North America for the next 50 years.

■ There is an excellent opportunity to consider expansion of both binational and bilateral cooperation in the areas of multi-domain awareness, assistance to civil authority, and information operations.

### Where This Is Leading

Even while the study progresses, the real-time demands of the global geopolitical structure require constant preparedness. One of the vital concepts of this defense is anticipating the unexpected. In NORAD, several key elements will contribute to our readiness.

Our gap-filler program will allow us to see air activity within our borders to a much greater degree—from border to border and down to the ground. In addition, command and control (C<sup>2</sup>) upgrades, advances in technology, and new organizational structures will greatly improve our defenses and extend our decision time against cruise missiles and other unmanned air-breathing vehicles.

In the maritime domain, NORAD will provide binational warning, benefiting from the maritime domain awareness capabilities of both nations. This cooperation among multiple maritime agencies will provide a great deal of synergy in the watch over approaches to North America. An additional strong point in this effort is the fact that we view maritime activity through a binational, rather than a national, lens.

In the political arena, the NORAD Agreement expresses a shared statement of the two nations' interdependencies and vulnerabilities. It acknowledges geographic, economic, cultural, defense, and security issues while giving an equal voice to both partners. The agreement underscores respect for sovereignty and continues to build public trust and confidence in NORAD. Fundamentally,

it provides a shared means for both nations to agree on military action in defense of Canada, Alaska, the continental United States, Puerto Rico, and the U.S. Virgin Islands.

Militarily, NORAD enjoys a number of advantages. In the area of C<sup>2</sup>, each nation has an equal voice in decisions affecting NORAD missions. This unity of effort strengthens our protection from direct military attack and provides expanded surveillance and control over North American airspace and warning in the maritime domain. Through continuous improvement of our C<sup>2</sup> systems, we have tightened the seams around domains, borders, and agencies. Generally speaking, either nation can exercise C<sup>2</sup> of both nations' assets assigned to NORAD.

The way we do business also provides valuable training and operational experience, not only for NORAD missions, but also in United Nations, North Atlantic Treaty Organization, and other multinational operations. Furthermore, collocation of NORAD and USNORTHCOM staffs has gone far to facilitate trust, familiarity, and confidence by promoting U.S. understanding of Canadian issues and vice versa. This familiarity has done a great deal to shorten response time to crises.

As far as our bread and butter is concerned, aerospace warning and aerospace control continually provide space surveillance and missile warning to both governments. We detect, track, and report every missile launch in the world, assessing the threat to North America. Our defensive forces respond

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*collocation of NORAD and USNORTHCOM staffs has gone far to facilitate trust, familiarity, and confidence by promoting U.S. understanding of Canadian issues and vice versa*

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to all Russian long-range aviation approaching our borders and secure the investment in the North Warning System and coastal radars in Canada. In this regard, we continually improve the interoperable C<sup>2</sup> mentioned above and shorten response time.

Our new mission of maritime warning supports a formal nation-to-nation umbrella for sharing maritime information and provides authority to explore and identify what information both nations need to share among military and nonmilitary agencies

and departments. This mission highlights the requirement for a common user-defined operating picture and supports the ability to use established intelligence-sharing protocols existing in the aerospace domain, once again shortening the decision cycle.

It has been over 63 years since the end of World War II and the emergence of the Soviet threat. Throughout five of those decades, the North American Air Defense Command has met the threat, adapted to changing conditions, and provided a shield over North America. The command's flexibility and adaptability have been significant in its continuing defense of our nations. Today, the lines between security and defense have become blurred, and it is time to rethink the division of labor that can lead to stovepipes within governments and militaries. Eliminating seams or gaps among missions, domains, and operational functions is essential to success. As the first step toward that goal, Canada and the United States should concentrate on the best information-sharing practices among all departments and agencies.

To further enhance military cooperation, the command must continue to leverage lessons learned from its 50 years of successful operations. The concept of bilateral military cooperation has served us well, remains as relevant today as it was during the Cold War, and provides a strong foundation for the defense of North America for the *next* 50 years. As we investigate how our nations' armed forces can best work together, there is an excellent opportunity to consider expansion of both binational and bilateral cooperation to the areas of multidomain awareness, assistance to civil authority, and information operations. Processes and procedures that allow the Canadian and U.S. military to be more scalable, flexible, and responsive will also improve our effectiveness.

In light of recent events around the globe, we know we can never let our guard down. The citizens of our two nations expect and deserve to rest easy in a troubled world. Our solemn commitment at the end of the day is to continually strengthen the defense and security of Canada and the United States, such that our mutual societies continue to prosper in a North American community that is free and safe. **JFQ**



# Cyber Operations

## The New Balance

By STEPHEN W. KORNS

*This is no unsolvable problem if we face it wisely and courageously.*

—Franklin Delano Roosevelt

A new normalcy is ascendant in cyberspace. What does this mean, and what are the implications for the Department of Defense (DOD) cyber policy? Some characterize cyber new normalcy as hybrid, multimodal Internet conflict, which combines state-level lethality with amorphous cyber formations.<sup>1</sup> Others view cyber new normalcy as a breathtakingly broad and globally inclusive campaign of deliberate cyber penetrations against governments, militaries, and commercial concerns.<sup>2</sup> In a January 2009 *Foreign Affairs* article, Defense Secretary Robert Gates described today's new normalcy as the search for balance in defense capabilities.<sup>3</sup> A few examples might serve to better illuminate the cyber new normalcy concept.

During the August 2008 conflict between Russia and Georgia, cyber attackers used tools from a Web site hosted by a company in Texas to attack a Georgian government Web site that had been relocated—coincidentally—to a Web hosting company in Atlanta, Georgia.<sup>4</sup> In essence, the United States experienced collateral damage during these cyber attacks. Borderless cyber operations confounding border-based paradigms are not a deviation; it is cyber new normalcy.

During the December 2008 attacks in Mumbai, India, the attack teams used cable

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Airmen discuss operational status at Cyber Command (Provisional) network center, Barksdale Air Force Base



television, BlackBerry phones, Google Earth imagery, and global positioning system information to form an integrated, low-cost command and control capability that enabled a modicum of information superiority. As Ralph Peters points out, incidents such as Mumbai demonstrate that nonstate actors “do not fear network-centric warfare because they have already mastered it.”<sup>5</sup> Mumbai is not an outlier; it is cyber new normalcy.

Finally, in a subtle yet telling sign of cyber new normalcy, hackers in 2008 attacked the Barack Obama and John McCain campaign Web sites, compromised Mr. Obama’s personal Twitter account, hacked Republican Vice Presidential candidate Sarah Palin’s email, and falsified a Web account attributed to Vint Cerf, one of the Internet’s founding fathers. It leaves us wondering: if hackers have no contrition about sully national leaders or insulting Internet luminaries, what is next? And thus, we find the essence of cyber new normalcy: what is next in cyberspace? And are we prepared?

### The Modern American Experience

New normalcy has become an episodic policy construct in U.S. strategic ideation. National leadership has relied on the new normalcy clarion call to illuminate moments in time when it is understood that the Nation faces not only a severe threat, but also a transcending reorientation. Often invoked in times of national crisis, new normalcy in the American experience signals a cardinal shift in the nature of U.S. security.

For example, in the winter of 1937, the effects of President Franklin Roosevelt’s New Deal policies took an unexpectedly negative turn—the “recession within a depression”—with employment falling again to near Depression-era levels. In response, New York Mayor Fiorello LaGuardia despondently observed that “instead of considering the situation as an emergency, we accept the inevitable, that we are now in a new normal.”<sup>6</sup> Roosevelt’s new normalcy became the reality of Federally guaranteed economic security as the new basis for overall national security.

In 1953, President Dwight Eisenhower viewed the atomic realities of Soviet nuclear weapons as a new and untenable threat. Reflective of this thinking, a White House aide wrote a secret memorandum highlighting the nuclear age of peril as “the new and to all intents permanent normalcy.”<sup>7</sup> President Eisenhower believed containment to be inadequate against a nuclear-armed Soviet power;

therefore, his new normalcy became the “New Look” defense policy that emphasized mutually assured destruction through massive retaliation using air-atomic power.<sup>8</sup>

On October 25, 2001, echoing a deep national sense of insecurity after the 9/11 terrorist attacks, Vice President Richard Cheney lamented, “Many of the steps we have now been forced to take will become permanent in American life. They represent an understanding of the world as it is, and dangers we must guard against perhaps for decades to come. I think of it as the new normalcy.”<sup>9</sup> The Bush-Cheney new normalcy thus became the “New War,” instantiated in a fundamental shift to preclusion, or preemptive self-defense, under a permanent state of national emergency.<sup>10</sup>

New normalcy defines a quintessential dichotomy: the urge to return to the comfort and routine of a normal state, confronted by the realization that the prior condition no longer exists. For example, many in the U.S. foreign policy community viewed the collapse of the Soviet Union as an opportunity for a return to normalcy in American foreign policy, allowing the United States to cash in the peace dividend. Yet even as

mentally altered future. Perhaps Eisenhower best captured this nuance as “groping to know the full sense and meaning of these times in which we live.”<sup>11</sup>

U.S. joint military doctrine includes new normalcy as a central concept. From this perspective, new normalcy is the condition achieved whereby an adversary is rendered unable to oppose U.S. strategic objectives. After achieving the operational endstate, new normalcy becomes a strategic goal in transition from conflict, which disrupts normal life, to a new level of stability. To achieve new normalcy, the U.S. military, supported by interagency and multinational partners, transitions from major combat operations to stabilization, security, transition, and reconstruction. In addition, adaptive force packages counter any insurgency resistance as the new normalcy begins to take shape.

Although primarily understood from a policy development point of view, there is also a socioscientific basis for comprehension of new normalcy. Thomas Kuhn posits that when the current normal condition cannot explain or resolve an anomaly, a crisis ensues, leading to a fundamental paradigm shift,

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### *new normalcy in the American experience signals a cardinal shift in the nature of U.S. security*

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the Belavezha Accords were being signed, effectively dismantling the Soviet Union, the tectonic undertones of terrorism and global fragmentation were already well in place. The notion of an American post-Cold War return to a neo-isolationist normalcy was but a fading ideal, when in fact that prior normal condition had long since vanished under the “New World Order” of Mikhail Gorbachev and George H.W. Bush.

New normalcy can also be seen as a reaction to what author Nassim Nicholas Taleb describes as “black swan” events—those highly improbable occurrences beyond the realm of normal expectations. What was previously accepted as impossible—even preposterous—is suddenly reality, leaving the Nation grasping for comprehension under forced acceptance. In this context, new normalcy becomes an extempore self-interrogatory, compelling the citizenry to unwillingly decipher and assimilate the residue of a perceived calamitous breakdown in the normal way of life. New normalcy thus serves as the tenuous bridge to the reality of an unknown, funda-

concluding in a new state of normalcy. In Kuhn’s normative transformation theory, a professional community “alter[s] its conception of entities with which it has long been familiar, and . . . shift[s] the network of theory through which it deals with the world.”<sup>12</sup>

### Cyber New Normalcy

At a 2005 hearing, Senator Olympia Snowe alluded to waking up one morning to “yet another new normalcy, just as we did on September 12, 2001.”<sup>13</sup> These words symbolically parallel growing national sentiment regarding the fear of a major cyber disaster—thus, the dramatic rise in predictions of a “cyber Pearl Harbor” or an “e-9/11” event. Vint Cerf even likens the rampant spread of malware to a “pandemic . . . that could undermine the future of the Internet.”<sup>14</sup> In the end, Cerf reflects circumspectly, “It seems every machine has to defend itself. The Internet was designed that way. It’s every man for himself.”<sup>15</sup>

Some in the national security community question whether current U.S. cyber



strategy can meet the challenges of modern cyber threats. For instance, a December 2008 Center for Strategic and International Studies (CSIS) report on cybersecurity concludes that protecting cyberspace is “a battle we are losing.”<sup>16</sup> In testimony before Congress, Jim Lewis, a member of the panel that wrote the CSIS report, stated that “the U.S. is disorganized and lacks a coherent national [cybersecurity] strategy.”<sup>17</sup> Similarly, a 2008 Defense Science Board report concludes that “there is scant real progress to better secure our information infrastructure.”<sup>18</sup> The former Director of National Intelligence believed the country is “not prepared to deal with current cybersecurity threats.”<sup>19</sup> A former special assistant to the President for critical infrastructure protection warns: “Are we ready for a large-scale cyber disruption or attack? I believe the answer is clearly no.”<sup>20</sup>

The daily tidal wave of ever more shocking revelations threatens to overwhelm, as if we are witnessing a recession in cybersecurity capabilities. Cyber attacks have resulted in government-wide computer infections and loss of information. The Department of State admits to losing terabytes of information.

Likewise, DOD has lost a volume of information equivalent to twice the number of printed pages in the Library of Congress. Hackers so pervasively penetrated the U.S. Bureau of Industry and Security that the agency completely disconnected itself from the Internet. The White House itself has had to deal with unidentified intrusions into its network, and malware has even infected laptops aboard the International Space Station. Due to the overwhelming nature of these cyber threats, a 2008 Senate report indicated the cost to defend government networks could rise to as much as \$17 billion.<sup>21</sup>

The unprecedented growth in cyber threats has led policymakers and analysts alike to assert with increasing frequency that the United States is experiencing a new normalcy in cyberspace. As early as 2003, the Gilmore Commission’s report on *Forging America’s New Normalcy* predicted the onset of cyber new normalcy conditions, including cyberterrorism.<sup>22</sup> In commenting on the increasing sophistication of cyber attacks, the state of Michigan’s chief information security officer recently noted: “I don’t think this is just hype—this is the new normal.”<sup>23</sup> Perhaps

the clearest, most unambiguous recognition of cyber new normalcy is the CSIS 2008 report on cybersecurity, which invokes the spirit of Roosevelt’s national emergency, Eisenhower’s nuclear threat, and Bush’s war on terror: “The U.S. must treat cybersecurity as one of the most important national security challenges it faces. . . . [T]his is a strategic issue on par with weapons of mass destruction and global jihad.”<sup>24</sup> The following trends provide compelling evidence of this new normalcy condition in cyberspace.

*new normalcy is the condition achieved whereby an adversary is rendered unable to oppose U.S. strategic objectives*

**Commoditization.** Under old normalcy, individuals developed malware. Under cyber new normalcy, anyone can obtain malware at the “cyber drive-through window.” The Internet is a profit-generating machine for criminal syndicates that have perfected malware-as-a-service. The Organisation for Security and



Airman monitors servers for unauthorized activity on Ali Air Base, Iraq

U.S. Air Force (Jonathan Snyder)

Co-operation in Europe estimates that the cyber underground now rakes in a staggering \$100 billion per year.<sup>25</sup> Reflective of this trend, during the Georgian-Russian conflict, hackers posted downloadable malware on public Web sites with instructions on how to join in the cyber attack against Georgia. An Internet journalist investigating the issue concluded: "All I needed to do was to save a copy of a certain web page to my hard drive and . . . voilà: my browser was now sending thousands of queries to the most important Georgian sites, helping to overload them. . . . [I]n less than an hour, I had become an Internet soldier."<sup>26</sup>

**Identification.** Under old normalcy, when bombs and bullets flew, identification of the adversary was relatively easy. In cyber new normalcy, identification is the exception. In *Here Comes Everybody*, author Clay Shirky attributes "ridiculously easy group formation" as the Internet's defining characteristic.<sup>27</sup> The Estonian and Georgian cyber events serve as the quintessential examples of this state versus ad hoc cyber assemblage phenomenon. Although some initially declared the events as cyberwar, most in the international community now characterize these incidents as cyber crime via a proxy apparatchik of instantaneous cyber militia-mobs. At best, according to Estonian officials, it is terrorism.<sup>28</sup>

**Distrust.** Under old normalcy, we trusted but verified. Under cyber new normalcy, there is no trust, and verification is highly suspect. Malware can spoof and effectively nullify antivirus and firewall systems. Even worse, a team of Dutch and Swiss researchers have broken the MD5 encryption algorithm used by nearly all Internet Web browsers.<sup>29</sup> With MD5 compromised, it is now possible that Web browsers could erroneously verify forged digital signatures or software certificates, compromising previously trusted Internet transactions with little indication of foul play.

**Symmetry.** Under old normalcy, cyber was seen as an asymmetric capability. Under cyber new normalcy, cyber attacks are no longer asymmetric; they are *expected*. As Verisign analyst Eli Jellenc points out: "We are witnessing . . . the birth of true, operational cyber warfare."<sup>30</sup> Similarly, Representative Jim Langevin of the House Homeland Security Committee asserts, "Never again will we see major warfare without a strong cyber component."<sup>31</sup> Cyber today is ubiquitously many-to-many: weak attack weak, strong attack

weak, and weak attack strong. Asymmetric warfare is generally considered the domain of the weaker party in applying unconventional methods to exploit vulnerabilities of the strong. Given this, it is questionable if the asymmetry precept still applies to cyber. Russian-inspired hackers have in succession attacked Estonia, Lithuania, and Georgia. These are the attacks of the cyber strong against the cyber weak. Iranian Shi'a and Arab Sunni hackers carry out "Koranic retaliation" cyber attacks against each other. Indian and Pakistani patriotic hackers engage in sustained cyber skirmishes. When the Lebanese government tried to prevent Hizballah from operating its own fiber optic network, Hizballah declared the affront as tantamount to war and responded by taking over West Beirut. Cyber operations are now the very definition of modern conventional tactics.

cyber adversaries. Over a decade ago, Richard Harknett argued that deterrence models developed during the Cold War will provide "poor guidance" for strategic thinking about cyber deterrence.<sup>33</sup> The well-regarded Cyber Conflict Studies Association indicates that to date there is no compelling evidence refuting Harknett's position. This situation will likely continue unabated until the penalties for cyber attacks begin to outweigh the gains.

### The New Balance

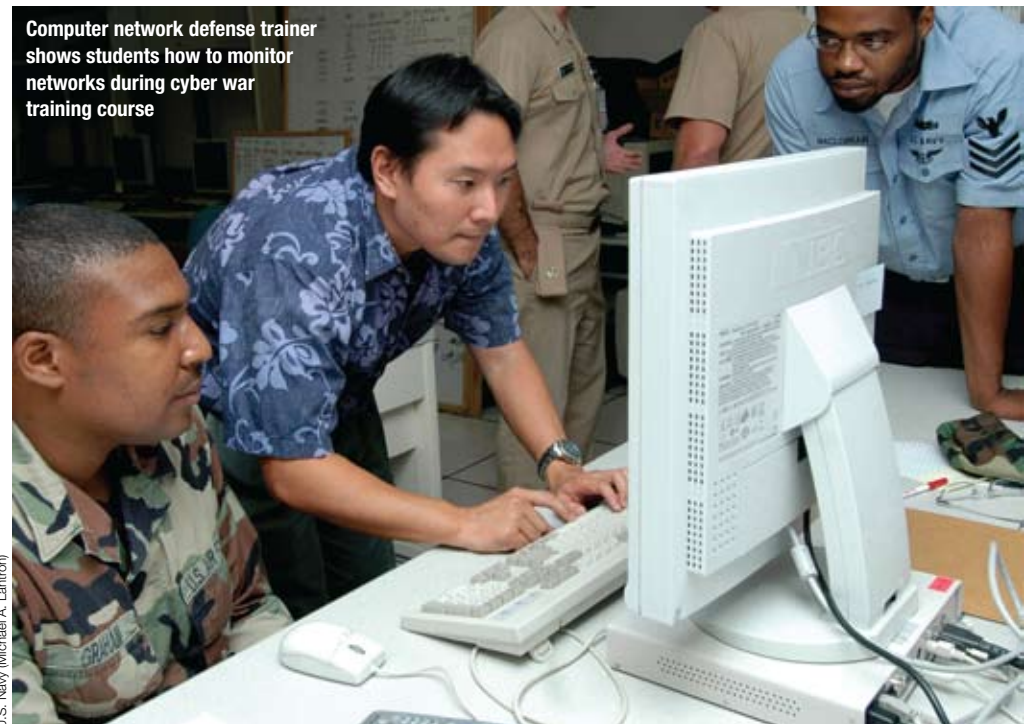
In facing the new normalcy of today's complex defense environment, Secretary Gates offers an insightful way ahead. In January 2009, he established "balance" as the defining principle of the Pentagon's new National Defense Strategy.<sup>34</sup> In effect, the Secretary's vision can be seen as the call for a New Balance in DOD capabilities, and it

*under cyber new normalcy, cyber attacks are no longer asymmetric; they are expected*

**Deterrence.** Under old normalcy, "deterrence by denial" defined the core U.S. cyber policy.<sup>32</sup> Cyber new normalcy admits that deterrence has failed to substantively alter the motivational calculus of determined cyber attackers. As Jim Gosler points out in "Digital Dimensions," cyber defenses are mismatched against the offensive efforts of

establishes a practical framework for addressing cyber new normalcy. In line with joint doctrine, cyber New Balance could be defined as the quest to attain a new level of stability in the DOD cyber environment in order to better support U.S. strategic objectives.

Secretary Gates' call for a New Balance is strikingly reminiscent of the new normalcy



Computer network defense trainer shows students how to monitor networks during cyber war training course

U.S. Navy (Michael A. Lantron)

experiences of the Roosevelt, Eisenhower, and Bush administrations. For example, in his first inaugural address, Roosevelt called for a frank and honest discussion regarding the Nation's economic ills. Secretary Gates' New Balance similarly calls for a blunt assessment of the current U.S. defense posture. In line with this thinking, cyber new normalcy warrants a frank, realistic assessment of the New Balance needed in DOD cyber capabilities. A fundamental premise of cyber new normalcy is that a New Balance is required in culture, conduct, and capabilities in order to better operate and defend in and through cyberspace. A judicious cyber New Balance policy would reassess DOD-wide priorities in areas such as offense balanced with defense, personal use balanced with official use of military networks, compliance balanced with accountability in network usage, and permitting versus restricting unfettered Internet access from the global information grid. As Kuhn warned, these changes may be difficult to accept for those entrenched within the current paradigm. It may unfortunately take a Billy Mitchell moment—a "cyber Ostfriesland"—to truly convince skeptics of the reality of cyber new normalcy.

Secretary Gates' call for a renewed focus on U.S. deterrence policy evokes President Eisenhower's New Look emphasis on strategic deterrence. An enlightened cyber strategy would seek an appropriate balance between secrecy and openness. While working at RAND in the early 1960s, Paul Baran conceived the digital packet switching concept used to establish a survivable U.S. nuclear command and control system. Significantly, Baran openly published his work, with the U.S. Government's implied consent, under the premise that "deterrence only works if the other guy knows."<sup>35</sup> Harknett similarly argues that deterrence is contingent on the challenger and the deterrer possessing shared knowledge about each other.<sup>36</sup> A perceptive cyber New Balance protocol would openly communicate certain capabilities and intentions in order to strengthen cyber deterrence. Credible deterrence will also require balanced resourcing for identification and authentication; data hardening and network resiliency; cyber intelligence, surveillance, and reconnaissance; and cyber early warning and response.

Mindful of the Bush New War, Secretary Gates' New Balance seeks solutions to hybrid conflict. Cyber new normalcy reflects Ralph Peters' notion of a "counter-revolution in mili-

tary affairs."<sup>37</sup> In essence, an evolving "counter-revolution in cyber affairs" defines cyber new normalcy. An adroit New Balance cyber policy would encourage an honest assessment of the military means for engaging in cyber conflict and determine the relevancy to cyber new normalcy conditions. As witnessed in the cyber attacks on Estonia, Lithuania, and Georgia, non-mirror-imaging adversaries have a well-honed grasp of operating within the grey area of cyber, below the threshold of use of force. Deterritorialized attackers target territorialized infrastructure, frustrating border-based orthodoxy. These hybrid cyber

should motivate international law to accommodate and even encourage the judicious application of cyber operations.<sup>39</sup> However, while some have asserted that the United States is at war in cyberspace today, there must also be follow-through in articulating the strategy and conditions for a discernible end. Implying an undefined and unending cyberwar could lead to the misperception that the United States seeks militarization of the Internet. In addition, international law remains immature for determining when a cyber event crosses the threshold triggering use of force. Cyber New Balance would seek

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*a perceptive cyber New Balance protocol would openly communicate certain capabilities and intentions in order to strengthen cyber deterrence*

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militia-mobs clearly demonstrate that adversaries will not fight the U.S. military on its own terms in cyberspace. In fact, military-on-military in cyberspace may become the exception, rather than the norm, with relatively few "lawful combatants" in the traditional sense. An astute strategy would seek to refine the understanding of how "military affairs" fits within a cyber world where predominantly industry and noncombatant civilians establish and control the core operational theater of conflict. The counterrevolution in cyber affairs will necessitate development of alternative tactics against this global amalgam of state, state-sponsored, and nonstate actors.

In addition to the above, a wise cyber New Balance would prudently avoid the "10-foot-tall Ivan" syndrome that some analysts argue symbolically represented overstated Soviet Cold War capabilities. A thoughtful approach would seek a conscientious balance between cybersecurity and openness, and inclusively engage the public. The Gilmore Commission succinctly captured the essence of this tension by suggesting that any new normalcy policy should include "heightened security but not with such an obsessiveness that it would destroy the economic base or the civil freedoms of the country."<sup>38</sup>

Finally, a sensible New Balance policy would rationally approach the issue of cyberwar. Cyber weapons may offer the advantage of low cost in terms of human life and physical damage. In fact, a growing line of thought suggests that the potentially nonlethal and discriminative nature of cyber weapons

to avoid unproductive discourse of endless, boundless cyberwar while constructing a methodology for discriminating between cybercrime, cyberterrorism, and the conduct of legitimate military cyber operations.

Lessons from the Roosevelt, Eisenhower, and Bush new normalcy cases provide compelling evidence to suggest that enlightenment, rather than retrenchment, is the path for cyber New Balance. The economic calamity of the Great Depression directly confronted Roosevelt, as the Soviet nuclear arsenal did Eisenhower and terrorism did Bush. The threats were known and real. Similarly, cyber threats are real and have evolved. In the face of fractious cyber challenges, an insightful reevaluation of DOD cyber policy is advisable.

With Secretary Gates' New Balance as the fundamental underpinning, DOD has a compelling opportunity to rebalance cyber priorities in line with the realities of cyber new normalcy. A comprehensive cyber New Balance effort recognizes that action must be taken across the entirety of the defense community, including defense industrial base partners. Progress necessitates identification and resolution of entrenched technical and cultural impediments that hamper progress. A New Balance strategy can attain true cyber new normalcy through change in culture and conduct, improved technical capabilities, and altered policy constructs that deliver meaningful deterrence. Failing these, DOD cyber capabilities will undoubtedly remain ossified under old normalcy. **JFQ**



## NOTES

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# The Stance on the **Cluster Munitions Ban** U.S. Philosophy Explained



Four undetonated cluster bombs await removal by UN peacekeepers in Lebanon

**T**his article provides an unclassified explanation of why the United States still needs the military capability provided by cluster munitions (CM). This need exists in spite of the fact that many countries signed a treaty agreeing to ban CM use and/or production. The primary manufacturers of such munitions—the United States, Russia, China, Pakistan, India, and Israel—did not participate in these negotiations and did not sign the treaty. This article also provides an overview of the general types of CM that the United

States has in its arsenal, followed by principles of CM targeting that point to their absolute necessity on today's battlefield.

CM have one common element—a canister or other means to carry and deliver submunitions. Canisters are delivered via aircraft, cannon, ground-launched rocket, missile, or naval vessel. The canisters are gravity-driven, ballistic, or glide guidance-controlled as they progress toward the intended target. The canister's main functions are to provide an easy packaging of the submunitions prior to release/launch, and then once released or ini-

By DONALD L. HINTON

tiated from the launch platform, to maintain control of the submunitions until expected parameters in space, time, or conditions are met, at which point submunitions are dispersed from the canister.

Submunitions that have an explosive/incendiary charge associated with their attack against a target are of international and nongovernmental organization (NGO) concern. Currently, most submunitions do not

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have sensors or guidance and are activated on impact. Individual submunitions guidance is largely experimental. Each submunition type has a set capability that provides the military commander with flexibility when considering the attack of a specific area target. CM are not all the same in capability, characteristics, or attributes, and it is misleading to conflate all types into one category.

Cluster munitions are versatile and can be used against almost any target type. Examples of exceptions are hardened sites or underground facilities. Reports of the use of CM during the recent events in Gaza seem rather unlikely, since the targets attacked do not fall under the most common categories for cluster munition targets, which include aircraft on runways and revetments, trucks/tankers/vessels, heavy armor, air defense radars, artillery, and surface-to-air missile defense sites (mobile/fixed), to name a few. That said, CM can be used against a wide breadth of targets. CM missions can be described as degrading sensor capability, delaying or breaking momentum and force cohesiveness, cutting depot and resupply operations, keeping a force suppressed to limit its return fire, counterbattery fire to attack ground-based artillery, sealing gaps in nonlinear battlelines, or disrupting command and control.

Cluster munitions provide the warfighter with a weapon that can be employed to quickly address a target area and reduce the assets needed to protect or cover areas, thus providing economy of force. CM enable our forces to minimize exposure to hostile fire and can be quickly employed to protect forces coming under attack from an overwhelming force. They address multiple targets with one weapon or strike, and distribute munition effects over the target area more evenly than unitary warheads.

## Beginnings

Before we can understand how, when, where, and why CM are used, we should first examine their genesis. The first cluster bombs were used by the Germans in World War II and were often referred to as butterfly bombs. They were used to attack both civilian and military targets. The technology was developed further by the United States, Russia, and Italy. CM in a wide variety of forms are now standard for many nations. Reportedly, 34 countries produce them and at least 23 countries use them. In 1945, there was widespread acceptance of the targeting of civilian populations

in Hiroshima and Nagasaki. At that time, 85 percent of the U.S. public approved of the bombing, according to polls.<sup>1</sup> If such a poll were taken today, the numbers would likely be reversed.

The U.S. Government is aware of the humanitarian concerns expressed by many countries and NGOs over CM, but it also understands that it has an inherent responsibility to ensure its own national security as well as that of its allies. The recent adoption of the “Department of Defense [DOD] Policy on Cluster Munitions and Unintended Harm to Civilians” is a clear indicator that the U.S. Government understands and accepts the need to change. While the United States believes that the new policy will provide better protection of civilians and civilian infrastructure following a conflict, it also allows for the retention of this legitimate and useful weapon. This policy makes it clear that the United States recognizes the need to minimize unintended harm to civilians and their infrastructure. Submunitions provide distinct advantages against a range of targets, and their use may even reduce risks to U.S. forces, which is why military commanders often prefer them over unitary bombs, which can require many sorties to achieve an equivalent effect. While CM may cause unintended harm to civilians during combat, the damage will still be far less than that from the required number of unitary weapons needed to suppress the same target. Unitary weapons would destroy the entire target, while CM would minimize negative consequences for civilians and still achieve the military consequences desired.

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*the U.S. Government is aware of the humanitarian concerns over CM, but it also has an inherent responsibility to ensure its own national security as well as that of its allies*

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CM permit a smaller force to engage a larger adversary and are considered by some an economy of force weapon. Many CM rely on simple mechanical fuzes. They arm the submunition based on its rate of spin and explode on impact or after a set time delay. Newer generations of sensor-fuzed submunitions are being introduced, and they have been shown to improve munition and submunition accuracy, and to reduce the large number of residual unexploded submunitions. These sensor-fuzed submunitions are designed to sense and destroy vehicles without creating an extensive hazard area of unexploded submunitions.

When a properly delivered submunition fails to function, it is designated *unexploded ordnance* (UXO). Depending on the submunition, a self-destruct mechanism may render a UXO submunition safe in seconds or minutes. Some early designs did not have self-destruct features and posed a UXO hazard on the battlefield. The UXO may be armed or unarmed. While any UXO is undesirable, unarmed UXO poses a reduced hazard. Armed UXO may or may not pose a hazard, depending on design. If the armed UXO contains a stored-energy device, such as a spring that has not been released or a battery that has not discharged, then it poses a definite hazard if moved or handled.

Many misconceptions about cluster munitions exist:

- CM are an outdated weapon.
- Impact after use is not taken into consideration prior to targeting and planning.
- CM are used solely for large areas.
- CM are indiscriminate and inaccurate.
- CM present significant and complex UXO and explosive remnants of war conditions.
- DOD can use unitary and precision weapons just as effectively.

Last summer, a DOD policy on CM was signed by Secretary of Defense Robert Gates. This is a clear indication that DOD understands the concern over these weapons. This policy means that almost none of our existing stockpile can be retained, and an almost

complete turnover of our stockpile will take place over the next 10 years. The United States has very strict rules in place for the targeting of CM, so it is highly unlikely these weapons will be used unless absolutely needed.

While CM constitute the vast majority of the U.S. Armed Forces’ indirect tactical fires, they actually compose a small portion of the total threat to humans presented by unexploded aerial bombs, artillery shells, and other conventional munitions. Some parties claimed that unexploded CM constitute a major category of postconflict hazard and that they warrant new mechanisms beyond those that already exist in Amended Protocol II and



Protocol V of the Convention on Conventional Weapons (CCW). This group became known as the Cluster Munitions Coalition (CMC). The United States and other CM-producing states participate in the CCW but not the CMC, which signed a treaty in December 2008. Since the CMC does not include the major producers of CM, the formation of this coalition is thought to be merely a political gesture.

While both air- and ground-based fire support have proven invaluable, they have struggled to deal with the extreme complexity, density, and constraints of the urban environment. It is in this area that precision munitions have proven their worth. The Army has recently taken huge steps in the field of precision munitions and is in the midst of its

own precision munitions revolution in field artillery capabilities.<sup>2</sup> The integration of these newly fielded capabilities into the joint fight not only will strengthen U.S. military capability but also will pose a challenge to commanders, planners, and fire support coordinators, making it difficult for them to choose the right weapon for each job.

The table lists the quantity of U.S. cluster munitions and their reported reliability figures. While not 100 percent, reliability is generally very high and improving. The table also shows which CM have a self-destruct feature built in.

### Recent Conflicts

The term *explosive remnants of war* (ERW) refers to all abandoned and unex-

ploded weapons in an area—that is, unexploded artillery shells, grenades, mortars, rockets, air-dropped bombs, and antivehicle landmines as well as dud CM. ERW exclude antipersonnel landmines, and include weapons that did not detonate as designed or were abandoned (and can still detonate as designed). ERW often contain powerful explosives and metal fragments that become shrapnel. Laos, Cambodia, Kosovo, Eritrea, Iraq, Afghanistan, and now Lebanon have experienced ERW casualty levels on a scale similar to those caused by landmines.

**Iraq.** Iraq Body Count's research shows that 27,000 civilian deaths from violence were reported in 2006.<sup>3</sup> This represents a huge increase compared to preceding years: 14,000 killed in 2005, 10,500 in 2004, and just under

## U.S. Cluster Munitions: Quantity and Reliability

Designation	Submunition	Quantity	Designed Effect	Reliability (percent)	Self-destruct Feature
CBU-87/B	BLU-97/B	202	Antipersonnel	94	no
			Anti-materiel		
CBU-89A/B	BLU-91B	72	Antitank	93	yes
	BLU-92B	22	Antipersonnel		yes
CBU-97B	BLU-108B	10	Antitank/-materiel	97.3	yes
MK-20	MK-118	247	Antitank	98	no
CBU-99	MK-118	247	Antitank	98	no
CBU-100	MK-118	247	Antitank	98	no
CBU-103/113	BLU-97B	202	Antipersonnel	94	no
			Anti-materiel		
CBU-104	BLU-91B	72	Antitank	93	yes
	BLU-92B	22	Antipersonnel		
CBU-0105/115	BLU-108B	10	Antitank/-materiel	97.30	n/a
CBU-107B	Nonexplosive penetrator rods	202	Antipersonnel	100	n/a
CBU-116	BLU-97B	202	Anti-materiel	94	n/a
CBU-117	BLU-97B	202	Anti-materiel	94	n/a
CBU-118	BLU-97B	202	Anti-materiel	94	n/a
ATACMS Block 1	M74	950	Antitank	98	no
ATACMS Block 1A	M74	300	Antitank	98	no
M26	M77	644	Anti-materiel	95	no
M26A1A2 ER-MLRS	518 XM85	518	Anti-materiel/personnel	97	no
M483/M483A1 DPICM	M42 and M46	88	Anti-materiel	97	no
M864 ER-DPICM	M42 and M46	72	Anti-materiel	97	no
M261 MPSM	M73	9	Anti-materiel/personnel	94	n/a

12,000 in 2003 (7,000 during the actual war and invasion, and another 5,000 during the “peace” that followed). One measure by which the 2006 figures quickly exceeded those of 2005 was the major ground-based bombing attacks that each killed more than 50 civilians (and sometimes far more). Altogether, there have been 49 of these attacks since 2003, killing 4,454 to 4,632 civilians, and probably more.

**F/A-18 Super Hornet aircraft deploy cluster bombs onto smoke targets below**



U.S. Navy (Gary Pili)

*the Army has recently taken huge steps in the field of precision munitions and is in the midst of its own revolution in field artillery capabilities*

The death tolls from these large-scale incidents are well reported: on average, each incident received 33 independent media reports, including updates to the death toll, ranging up to 92 reports for the largest incident. Even so, these attacks leave out many wounded, some of whom may have died from their injuries after the last of these reports were collected. The total number of mine casualties over the years in Iraq is not known. Handicap International reported that landmines caused approximately 13,832 casualties, cluster submunitions 110, and ERW 20; the rest are unknown (over 7,500 records).<sup>4</sup>

**Afghanistan.** In 2006, the International Committee of the Red Cross recorded 796 mine or ERW casualties (98 killed and 698 injured). “Within the total, 194 [24 percent] casualties were caused by antipersonnel mines, 91 [11 percent] by anti-vehicle mines, 22 [3 percent] by cluster submunitions, and 424 [53 percent] by other ERW,” according to Landmine Monitor.<sup>5</sup>

According to the United Nations Mine Action Center for Afghanistan, 160 casualties were caused by antipersonnel mines (24 percent), 92 by antivehicle mines (14 percent), 16 by cluster submunitions (2 percent), and 401 by other ERW (60 percent). Data from both NGOs confirm that CM caused a relatively small portion (2–3 percent) of the overall number of casualties in Afghanistan.

**Kosovo.** No landmine or cluster submunition casualties were reported in Kosovo in 2006.<sup>6</sup> However, there were 11 casualties in 7 ERW incidents: 1 person was killed and another 10 were injured. In 2005, 11 cluster submunitions and ERW casualties were recorded. CM have caused at least 152 postconflict casualties to date. Most of these casualties occurred in the few months immediately after the bombing. According to Handicap International, CM were responsible for 31 percent of total reported casualties from 1999 through 2005.<sup>7</sup> Mines caused 52 percent of the casualties. The impact of CM in Kosovo was reduced by one of the largest humanitar-

ian operations (the International Kosovo Protection Force) ever undertaken, including one of the best-resourced mine action projects ever mounted. According to the Kosovo Protection Corps Coordinator, from June 1999 to the end of 2006, 533 casualties were recorded (111 people killed, 422 injured).<sup>8</sup>

**Lebanon.** The best information on dud rates is based on approximate figures. The estimated number of CM, according to Observer Group Lebanon, is 4 million fired. The expected number of CM in the field is therefore 400,000 (10 percent failure rate based on these figures). The number found to date is approximately 200,000 (5 percent of the total fired).<sup>9</sup> The original estimate from the Lebanon Mine Action Centre was 1 million CM in the field, which would equate to a 25 percent failure rate; the Mine Advisory Group’s operations manager in Lebanon believes this to be grossly overestimated. As the find rate is closer to 5 items per 1,000 square meters, given that the estimate for contamination is 40 million square meters, that would equal 200,000 CM; adding to that the 100,000 cleared in the emergency phase and the 50,000 cleared by private agencies would bring the figure to 350,000. With only 10 million square meters left, the expected find rate would be 50,000 CM, balancing out at 400,000 CM in the field.

Israel is reported to have fired 160,000 artillery projectiles during the conflict, and it is reasonable to assume that 10 to 20 percent contained CM. Israel also dropped more than 1.2 million cluster bombs into Lebanon. CM accounted for nearly 11 percent of the casualties prior to July 12, 2006, increasing to 13 percent after the conflict.<sup>10</sup> As of May 31, 2007, 904 cluster bomb strike locations had been recorded. The United Nations further estimated that, in addition to CM, approximately 15,300 other items of UXO fell on the ground in South Lebanon. This ordnance includes air-dropped 500- to 2,000-pound bombs (found in residential areas), artillery rounds, air-delivered rockets, and some 1,800 rockets fired from multiple-launch rocket systems.<sup>11</sup>

## Targeting

Cluster munitions present significant and complex UXO and ERW conditions; however, the United States continues to spend heavily on research and development. Much of this effort focuses on minimizing the risk of UXO and ERW by developing more reliable self-destruct fuzes and alternative warheads.

A *target* is an entity or object considered for possible engagement or action. It may be an area, complex, installation, force, equipment, capability, function, individual, group, system, or behavior identified for possible action to support the commander's objectives, guidance, and intent.<sup>12</sup> The joint force commander establishes these objectives, consistent with national strategic direction, to compel an adversary to comply with specific requirements or otherwise modify behavior. Targets may relate to strategic, operational, or tactical objectives. Forces will usually conduct continuous target development to support planning and to ensure a range of options for commanders. They may choose to engage targets specifically to create effects that help to attain the commander's objective. Every target has distinct characteristics that define how it will be targeted. Characteristics form the basis for target detection, location, identification, and classification for future surveillance, analysis, strike, and assessment. In general, there are five categories of characteristics by which targets can be defined: physical, functional, cognitive, environmental, and time.

In urban areas, considerations of the effects required and of those to be avoided are multiplied by the complexity and congestion of the environment. Targets can vary from the destruction of a small building to removing a sniper from a civilian apartment building

*cluster munitions offer the military commander the flexibility to use the firepower necessary to achieve the desired result*

without harming friendly troops, noncombatants, cultural buildings, or infrastructure. Historical studies show that approximately 90 percent of all urban engagements occur where friendly and enemy forces are in close proximity to each other. A stray munition or unintended effect can have great repercussions because troop density for offensive missions in urban areas can be as much as 3 to 5 times greater than for similar missions in open terrain.

U.S. operations in the cities of Iraq have generated a change in thinking about munitions capabilities in terms of size. Whereas the focus in Cold War operations was on weapons with larger blast, fragmentation, incendiary, or area effects, which are useful in full-scale

conventional warfare, the collateral damage effects of standard munitions (for example, the 2,000-pound Mk-84-class bombs) make them largely unusable in limited combat in the urban operational environment. Field artillery systems have an excellent standoff capability that generally exceeds that of fixed-wing aircraft. This capability is a crucial factor when considering the implications of artillery

Accuracy is only as good as the target coordinates and the signal received from satellites. For this reason, a global positioning system (GPS) munition that can obtain a circular error probable of 3 meters under optimal circumstances may perform worse under conditions involving signal interference. Some GPS munitions have backup inertial measuring units or inertial navigation

Army Tactical Missile System was highly successful in Operation *Desert Storm*



Lockheed Martin

employment, such as risk.<sup>13</sup> The operations that the Air Force conducts demand smaller munitions and an ability to focus weapons effects. CM offer the military commander the flexibility to use the firepower necessary to achieve the desired result. Today's CM should not be confused with those used in Laos, Kosovo, or even in the first Gulf War—they are far more sophisticated, and they provide the warfighter with the ability to quickly address a specific target or to address multiple targets at the same time.

guidance systems, and all of the munitions suffer a decrease in accuracy in these modes. With GPS as a primary guidance source, there are definitive issues that affect signal accuracy, both in determining coordinates of the target and in guiding the ammunition to those coordinates. Among these issues are target location error, datum accuracy, space weather impacts, visibility and geometry, and signal bounce.<sup>14</sup> Another area of concern deals with GPS jammers affecting targeting and weapon accuracy. All joint fires staffs, operators, and



personnel should understand these limitations if planning and execution of missions using GPS are to be successful.

### Law of Armed Conflict

While targeting may differ depending on whether it is being conducted by the Army or Air Force, one thing remains consistent: it is DOD policy that the Armed Forces must comply with the law of armed conflict. Four basic principles apply when making targeting decisions:

- military necessity
- preventing unnecessary suffering
- discrimination
- proportionality.

Military necessity acknowledges that the target is a valid military objective. The principle of unnecessary suffering means

that weapons are to be as humane as possible. All conventional weapons in the U.S. inventory are deemed to meet this requirement by design. Discrimination or distinction means that we distinguish between combatants and noncombatants, with the goal of prohibiting indiscriminate attacks. Proportionality is often the most contentious of these principles. By meeting the requirement of proportionality, the military is stating that it is taking into consideration anticipated incidental loss of civilians and their property. This requires planners to think deeply about the results of planned attacks in or around civilian communities.

Protecting against collateral damage may necessitate more precision, and this may come about through GPS solutions and other employment methods. Varying a munition's fuze setting can drastically alter the effect it has on a target. Delayed fuze settings usually

mean that bombs will bury themselves into the ground before detonation, thus controlling and limiting the blast, fragmentation, and incendiary effects. U.S. planners operate under strict rules of engagement and must take collateral damage into consideration when choosing a munition for a specific target.<sup>15</sup> Our enemies know that we operate under strict rules, and will purposely use civilians as human shields in order to deter attacks. Self-defense is the trump card when choosing which munition to use. Missions in Iraq caused many changes to targeting practices.<sup>16</sup>

The use of artillery during Operation *Iraqi Freedom* provides an example of the usefulness of smaller munitions. In the battle for Fallujah, for instance, proximity-fuzed artillery was effective against rooftop threats, and missions dangerously close to civilian targets were the rule and not the exception. The 155mm and 120mm fires were routinely within 200 meters of friendly forces.<sup>17</sup> Using larger munitions for fires in proximity to friendly forces would require increased distances and could result in the destruction of the buildings beneath the blast.

Army artillery fusing and trajectory options generally have the same application in urban areas as fixed-wing munitions; however, some munitions capabilities are more varied. The Army Tactical Missile System (ATACMS) has trajectory shaping, but no proximity or delay fuze option. The high-precision Guided Multiple Launch Rocket System (GMLRS) unitary weapon currently has no trajectory-shaping option or proximity fuze, while Excalibur, one of the newest munitions, has all of these options. Smart bombs are guided projectiles designed to deliver maximum damage to the target while minimizing both collateral damage and the risk of being intercepted by the enemy. Upgrades to GMLRS unitary and ATACMS will expand these capabilities by "shaping their trajectories to provide a nearly vertical attack angle, as well as adding tri-mode fusing options (proximity or airburst, point detonating and delay)."<sup>18</sup>

There is a dramatic increase in the lethality of weapons available to hostile elements. The United States must cope with advanced technology that reinvents itself almost overnight. The Army now faces a dangerous new world where the foe does not always have a face. At this time, the Army is often caught between a doctrine that has



Guided Multiple Launch Rocket System is capable of delivering cluster munitions

U.S. Army (Rick Rapp)

been successful in the past and a desire to prepare for unknown adversaries. These adversaries will not hesitate to take advantage of the Army's limitations under the law of armed conflict.

Both the Air Force and the Army increasingly rely on GPS as a primary guidance source for much of their modern precision munitions capabilities. Although any weapons system has factors that affect accuracy, such as operator training or hardware limitations, GPS-aided munitions are unique in various ways. They are subject to the accuracy of fixed target coordinates, and they rely on a space-based guidance signal, the influence of which is largely outside the control of the operator and can significantly affect performance. The Air Force and the Army use multiple systems to obtain target coordinates, which are derived from GPS.

While the care taken in targeting shows U.S. concern for potential civilian casualties, the Pentagon placed these casualties in the larger context of the war on terrorism: "We're now being threatened with weapons that could kill tens of thousands of people. We're trying to avoid killing innocent people, but we have to win this war and we'll use the weapons we need to in this war," then-Deputy Secretary of Defense Paul Wolfowitz said in response to a question about cluster bombs.<sup>19</sup> When asked about the civilian casualties caused by cluster bomb units, Pentagon officials stated that they were more concerned about the thousands who were intentionally killed on September 11, 2001. This is a clear indication that the military sees a distinction between the intentional targeting of civilians and civilian deaths caused as an unintentional side effect of war.

Inclusion of a provision articulating the legal rules governing CM use would confirm that CM may in fact continue to be used. The new Office of the Secretary of Defense policy on CM is an alternative to the complete ban proposal generated by the Oslo Process. The CCW, unlike the Oslo Process, includes all the nations that produce and use CM, making any agreement reached there much more practically effective. Second, taking advantage of technology, we can continue to maintain, produce, stockpile, and, when required, use CM, but do so in a manner that significantly reduces the impact these munitions have on civilians. Our policy on CM continues to protect our national security and reduce the impact

on civilian populations. Following the new policy guidelines will come at significant expense. A 1 percent UXO rate is not 1 percent in testing, but requires a 1 percent UXO rate for actual use during combat operations, across the range of operational environments in which we intend to use that weapon. Since almost none of our existing stockpile meets the new policy, an almost complete turnover of the existing cluster munition stockpile will take place.

While the policy provides for a 10-year transition period to achieve this 1 percent standard, those years will be required to develop the new technology, get it into production, and substitute, improve, or replace our existing stocks. To account for possible use during the next 10 years, the policy has placed the approval authority with the combatant commander, who is a four-star general or admiral.

Issues dealing with CM are complex and require a great deal of study and analysis; this short-term study finds that the Office of the Secretary of Defense is taking the proper steps to meet the challenges of not only U.S. security concerns, but also those of humanitarian organizations. CM are designed to be lethal, and current efforts will lessen the dangers after hostilities have ended.

The 2008 CM policy is a good indicator that the U.S. Government seeks to protect civilians and civilian infrastructure. Some radical groups have been known to use civilian shields for suppressing fires on military targets. In such an instance, unitary weapons would destroy the entire target, while CM can minimize negative consequences to civilians and still meet the desired military consequences. Also, historical studies prove that "90 percent of all urban engagements occur where friendly and enemy forces are within 50 meters of each other, and that urban engagements using supporting arms occur with less than 250 m between the same."<sup>20</sup> Ultimately, CM is still needed on the battlefield, but their uses and the collateral effects are still being studied. Now that they have been introduced as a weapon, they cannot be taken out of the inventory, or they will only be in the hands of our adversaries. Cluster munitions use has not been banned under U.S. and international law. Until we find a viable alternative, the United States will continue to use them in a judicious manner. **JFQ**

## NOTES

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<sup>2</sup> Craig A. McCarty, *Urban Joint Fire Support: Air Force Fixed-Wing and Army Field Artillery Precision Munitions Capabilities for Urban Operations* (Fort Leavenworth, KS: Army Command and General Staff College, 2007).

<sup>3</sup> Iraq Body Count records the violent civilian deaths that have resulted since the 2003 military intervention in Iraq. Its public database includes deaths caused by U.S.-led coalition forces and paramilitary or criminal attacks by others.

<sup>4</sup> Database provided to Handicap International for data analysis and research on April 25, 2007.

<sup>5</sup> Landmine Monitor, "Afghanistan," available at <[www.icbl.org/lm/2007/afghanistan#footnote-1081-110-backlink](http://www.icbl.org/lm/2007/afghanistan#footnote-1081-110-backlink)>.

<sup>6</sup> Landmine Monitor, "Kosovo," available at <[www.icbl.org/lm/2006/kosovo.html](http://www.icbl.org/lm/2006/kosovo.html)>.

<sup>7</sup> Landmine Monitor, "Kosovo," available at <[www.icbl.org/lm/2007/kosovo](http://www.icbl.org/lm/2007/kosovo)>.

<sup>8</sup> Handicap International, "Circle of Impact: The Fatal Footprint of Cluster Munitions on People and Communities," May 2007.

<sup>9</sup> Email from Llewelyn Jones, Mines Advisory Group, to author, August 5, 2008.

<sup>10</sup> Handicap International, *Fatal Footprint: The Global Human Impact of Cluster Munitions*, Preliminary Report, November 2006, 34–37, available at <[www.mineaction.org/downloads/1/Fatal\\_Footprint\\_HI\\_report\\_on\\_CM\\_casualties.1.pdf](http://www.mineaction.org/downloads/1/Fatal_Footprint_HI_report_on_CM_casualties.1.pdf)>.

<sup>11</sup> Mine Action Coordination Centre, Southern Lebanon, "Unexploded Ordnance Fact Sheet," September 23, 2006.

<sup>12</sup> Joint Publication (JP) 3–60, *Joint Targeting* (Washington, DC: Joint Chiefs of Staff, April 13, 2007), vii, available at <[www.dtic.mil/doctrine/jel/new\\_pubs/jp3\\_60.pdf](http://www.dtic.mil/doctrine/jel/new_pubs/jp3_60.pdf)>.

<sup>13</sup> Center for Army Lessons Learned Newsletter 03–32, "Weapons Effects in Urban Operations" (Fort Leavenworth, KS: U.S. Army Combined Arms Center, n.d.).

<sup>14</sup> Ibid., 55.

<sup>15</sup> Major Douglas Thiess, Air Force F–16 pilot and targeteer, interview with author, August 28, 2008.

<sup>16</sup> Ibid.

<sup>17</sup> See "Battle for Fallujah After Action Report Excerpts," available at <[www.cannonartillery.com/combat\\_ops/battle\\_for\\_fallujah/fallujah\\_aar\\_excerpts.cfm](http://www.cannonartillery.com/combat_ops/battle_for_fallujah/fallujah_aar_excerpts.cfm)>.

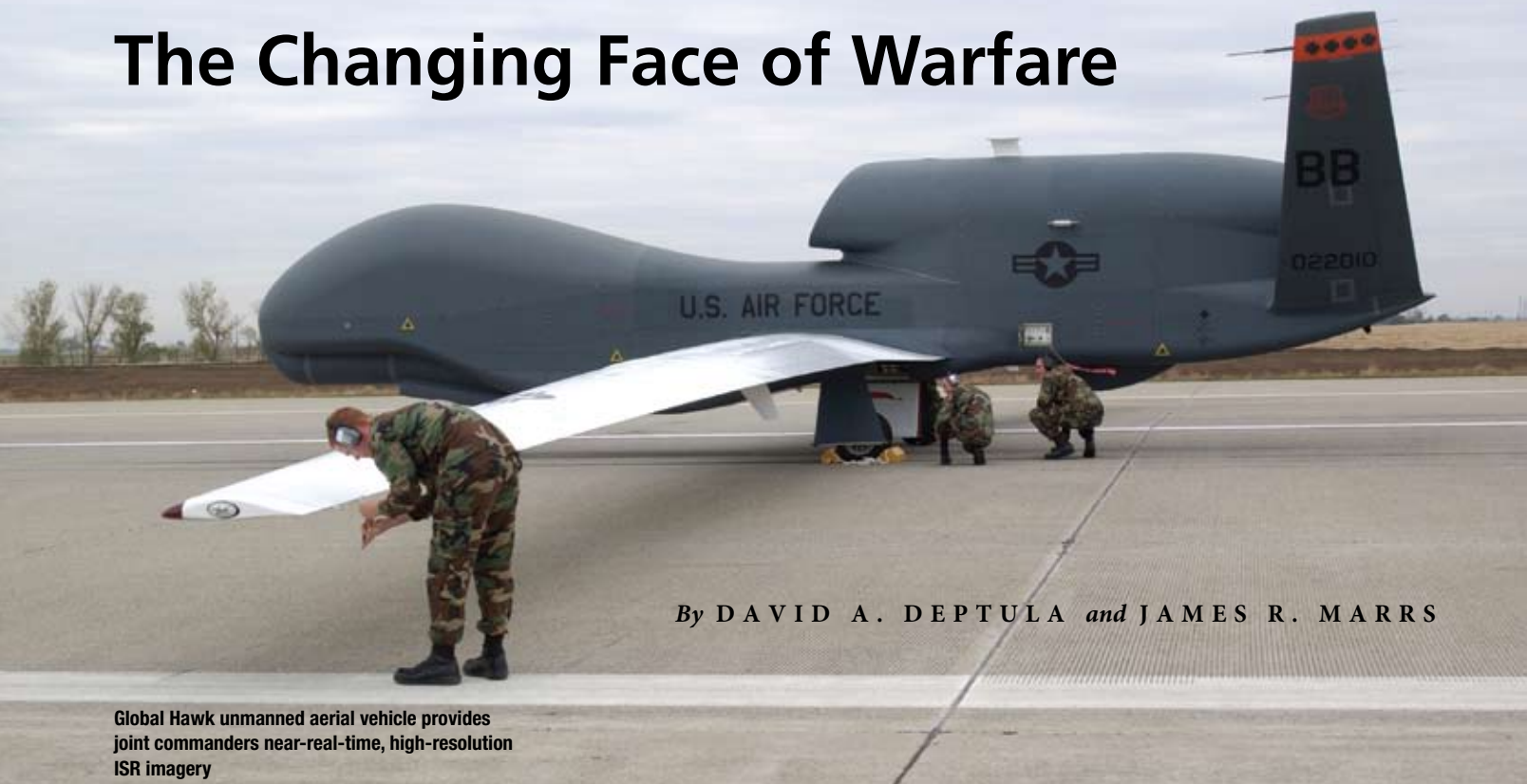
<sup>18</sup> McCarty, 53, quoting Scott R. Gourley, "Precision Brings Artillery Back into the Fight," *Army* 56, no. 12 (December 2006), 58.

<sup>19</sup> Deputy Secretary of Defense Paul D. Wolfowitz, interview with the *Sunday Telegraph* (London), Department of Defense news transcript, October 28, 2001.

<sup>20</sup> Ibid., paragraph 17.

# Global Distributed ISR Operations

## The Changing Face of Warfare



By DAVID A. DEPTULA and JAMES R. MARRS

Global Hawk unmanned aerial vehicle provides joint commanders near-real-time, high-resolution ISR imagery

DOD (John Schwab)

Over the last decade, our joint team has benefitted greatly from a combination of technology and new operating concepts to better leverage warfighting talent around the globe. Nowhere is this progress as evident as in the rapid evolution of distributed intelligence, surveillance, and reconnaissance (ISR) operations. Joint and allied forces depend daily on these new capabilities—a result of innovations stemming from our longstanding competencies in ISR, unmanned aerial systems, air, space, cyberspace infrastructure, and both the technology and art of distributed operations. This rapidly evolving paradigm, called *distributed ISR operations*, links platforms and sensors, forces forward, and human ISR warfighting expertise around the globe in ways that make networked combat operations routine. The criticality of this amalgam of airborne ISR capability to current operations in Iraq, Afghanistan, the geographic combatant commands, and homeland security is not widely known or

well understood. The intent of this article is to explain and expand awareness of this global network-centric warfighting capability.

### Foundations

A discussion of distributed ISR operations can only begin with an understanding of the architecture that makes the concept possible. The key element of the architecture is known as the Distributed Common Ground System (DCGS), which evolved from the high-altitude manned U-2 and national programs. In the mid-1980s, the Air Force deployed mobile ISR vans to forward locations to allow the U-2 to downlink aerial observation data for exploitation. The U-2 and exploitation vans had to be *within* line of sight of each other to work. The Air Force continued to develop technology to enable the U-2 to downlink data *beyond* the line of sight

of the exploitation vans. Leveraging multiple communication assets and space systems, and enhancing collection platforms and sensors, the Air Force built an architecture that allowed U-2, Global Hawk, Predator, and Reaper aircraft to transmit regionally collected data to exploitation locations around the globe. The Air Force DCGS system evolved into a Department of Defense (DOD) DCGS program to create a system of systems for the sharing of intelligence across joint and allied forces. Today, each of the military Services has DCGS elements, based on DOD DCGS standards, and tailored for specific aspects of joint and allied operations.

In 2003, after the success of Air Force DCGS during Operation *Allied Force*, the Service designated the sites and communications architecture of the Air Force DCGS as the AN/GSQ-272 Sentinel weapons system. Each ground station of the system architec-

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ture is designated as a Distributed Ground System (DGS). Five sites, known as DGS 1 through 5, constitute the Active-duty force.<sup>1</sup> Air Force DCGS is an exceptional example of a Total Force team. Currently, the Air National Guard operates four additional DGSs, with two more scheduled for activation this year.<sup>2</sup> DCGS crews also rely on the expertise of partner distributed mission site crews normally collocated at National Security Agency/Central Security Service cryptologic centers.

The integrated global Sentinel team continues to grow with the addition of federated partners—enabled by continued investment in a global Sentinel communications architecture. These partners include significant Army, Air Force, and joint capabilities—such as the 513<sup>th</sup> Military Intelligence Brigade, Fort Gordon, Georgia; the National Air and Space Intelligence Center at Wright-Patterson Air Force Base, Ohio; DCGS—Army; and the Tactical Exploitation System, Baghdad, Iraq—underscoring the joint collaboration that DOD DCGS standards make possible.

While there are those who characterize technology as not making much difference relative to the human dimension of warfare, the truth is that the appropriate mix of both is what has given U.S. joint forces critical advantages in warfare. The power of this mix can perhaps best be revealed using an example.

The global warfighting partnership in this example begins with an Air National Guard ISR exploitation crew at DGS Arkansas, Little Rock Air Force Base, prebriefing their 12-hour portion of an 18-hour Predator mission over Afghanistan. Essential prebrief background materials were built by the DCGS Analysis and Reporting Team (DART) at DGS-2, Beale Air Force Base, California, whose operational responsibilities include Afghanistan. The prebrief includes operational tasks and supported units for the duration of the mission. The specific lineup associating this Predator to one or more ground units during the airborne mission was decided earlier through a standing process managed by the Joint Information Operations Center—Afghanistan and the regional Combined Air Operations Center (CAOC), while the exploitation crew assignment was tasked by the Wing Operations Center (WOC) at the 480<sup>th</sup> ISR Wing, Langley Air Force Base, Virginia. In addition, the crew is briefed on major ground

operations in progress, joint force commander priorities, as well as other ISR assets available to prepare for cross-cue opportunities and any likely “audibles” that they anticipate as joint operations continue to unfold over the course of the day.

Once airborne, this Predator’s global networked team includes the DGS Arkansas element as well as pilot and sensor operators from the 432<sup>d</sup> Air Expeditionary Wing, Creech Air Force Base, Nevada, and a joint terminal air controller integrated with the unit that the Predator is operating with, all linked by secure Internet chat capability. At the same time that the Predator is airborne, a Global Hawk images an area nearby. Its DGS-1 crew at Langley identifies potential enemy activity that merits a closer look. An Internet chat discussion takes place among

the target. Upon successful conclusion of the engagement, the Predator is vectored back to its previous mission—in this case, route clearance for a future convoy mission.

The same advancements that make possible this global collaboration linking a Predator mission to specific joint and allied forces also make possible an unprecedented level of global ISR flexibility. Every day, Air Force global distributed ISR operations teams participate in multiple simultaneous joint and coalition irregular warfare operations, while at the same time providing persistent vigilance in other areas of responsibility to deter major combat operations and to support homeland security events resulting from natural disasters such as hurricanes and wildfires. These simultaneous ISR operations in multiple combatant commands have become routine.

*while there are those who characterize technology as not making much difference relative to the human dimension of warfare, the truth is that the appropriate mix of both is what has given U.S. joint forces critical advantages in warfare*

### Reinforcing Success

During the development and maturation of Sentinel, appreciation of the reliance of joint and allied forces on Air Force ISR capabilities was growing throughout the Air Force as a whole. As DGS crew members from the Pacific Air Forces and U.S. Air Forces—Europe began participating daily in Operation *Iraqi Freedom* and Operation *Enduring Freedom* ISR missions, the assumption could no longer be made that the efforts of ISR forces located in one area of responsibility would be limited to just that geographic region.

With these new operational realities in mind, an initiative was proposed that adopted the model of joint

the DGS-1 Global Hawk exploitation crew, DGS-2 DART, DGS Arkansas Predator crew, CAOC senior intelligence duty officer, and the joint terminal air controller (collocated with the ground forces), resulting in a redirection of the Predator from its current mission to this potential activity.

Once over the area, the DGS Arkansas crew detects and communicates hostile activity and then transitions along with the remainder of the networked team, both the aircraft and sensor operator crew and joint terminal air controller, as the Predator is cleared to engage

U.S. Air Force (Michael Edmond)



Above: Coauthor Col James Marrs (second from left), commander, 480<sup>th</sup> ISR Wing, with staff members

Right: Airmen analyze data at imagery workstation within Distributed Common Ground System



U.S. Air Force

command relationships to a Title 10 organization. Administrative control of Sentinel would be aligned under one organization, the 480<sup>th</sup> ISR Wing, and it would be realigned to the globally focused Air Force ISR Agency (AFISRA) in order to better actualize the global potential of this capability.<sup>3</sup> At the same time, operational control of the individual DGS would be retained by the regional Air Force major commands. The proposal was accepted by the Air Combat Command, Pacific Air Forces, and U.S. Air Forces–Europe commanders and approved by the Air Force chief of staff in January 2008. The significance of this action was to organizationally align Sentinel as a global ISR weapons system, streamline command chains, and maximize joint operational effects across the globe, while still remaining responsive to regional Air Force major command and combatant command concerns. The proposal also realized the major strength of the global network-centric capability of Sentinel: the ability to instantly move ISR access from combatant commander to combatant com-

mander or to provide tailored ISR to multiple combatant commanders simultaneously. Work continues with major command staffs to refine the doctrinal underpinnings of this global construct as we all are experiencing

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the shortcomings of current command relationship terminology in fully capturing the successful operational relationships that exist in this complex system.

The establishment of the AFISRA as the Air Force's Service Cryptologic Component, and the realignment of the 480<sup>th</sup> ISR Wing to the AFISRA, also enabled the creation of five regional ISR groups that allowed the

integration of both Title 50 and Title 10 ISR functions. The ISR groups are standardized in function and provide a unified force presentation of Air Force ISR capabilities to their respective combatant commands. Each of the five Active-duty DGS organizations forms the operational core of the ISR groups, and each group is operationally aligned with a primary Component Numbered Air Force (C-NAF).

By July 2008, these changes established the foundation for powerful regional ISR teams that live and breathe the operations of their respective C-NAF and combatant commands. The ISR groups and their accompanying Sentinel architecture were created to possess the inherent flexibility to rapidly focus local and global capability on their area of operations while simultaneously shifting elements of ISR capability from one region to another as theater and national priorities require. They truly are the foundation for a new operational paradigm that executes regionally focused, globally networked joint and allied ISR operations.

By establishing an Air Force-wide enterprise solution, we are providing more

**480<sup>th</sup> ISR Wing integrated USS *Harry S. Truman* Carrier Strike Group into DCGS operations, establishing successful ISR partnership**



U.S. Navy (Justin Lee Loeack)



ISR access to the major commands, combatant commands, and national Intelligence Community than ever before. Optimizing the capabilities that ISR brings to the fight requires streamlined command chains and a single focal point of leadership. DCGS is a perfect example; it is a network-centric weapons system relied upon by joint forces everywhere. Through the new organizational construct, the Air Force has brought responsibility for managing its globally distributed capabilities under one roof to ensure consistent, smart oversight. This centralized oversight allows the synchronization of complex operations across the globe and adjustment of tasking to optimize all the capabilities of the system as operational situations dictate, while decentralized execution ensures end users are provided the ISR they specifically require.

### Beyond Reachback

Not long ago, the term *reachback* was used to describe the relationship between forward deployed and in-garrison, geographically separated units. The forward site received the task and then passed back a portion of the ISR requirement to a second (usually based in the continental United States) site to assist in exploitation and dissemination. Specifically, this arrangement allowed forward-deployed forces to converse directly with centers of operational or analytical expertise wherever they existed. This construct also promised to reduce the size of a forward footprint that presented increasing logistical and force protection concerns.

While the current joint definition of reachback is fairly broad in scope, the term has also developed a negative connotation in some operational circles—where it has become synonymous with “not having the same sense of urgency” as the operational units forward (and therefore less likely to be trusted by forward commanders). Even though these views are in most cases without merit, detractors used the perceived faults of reachback to build a wall between them and any organization not located within the confines of their physical operational space. To them, if it was not organic or they did not control it, it did not matter.

The notion of reachback operations has been important to the evolution of modern combat operations. Yet its faults and limitations, whether perceived or actual, argue strongly for the adoption of distributed operations as a term of art—certainly in the

world of ISR—because it better reflects the multinode network-centric relationships that execute ISR today.

### Key Elements

Collaboration in combat operations does not just happen. Successful large-scale distributed ISR operations require a combination of specialization and standardization within the global enterprise to make this kind of partnering possible. The six elements that follow form the major building blocks of this global capability.

**Presence at Key Joint and Coalition Operational Hubs.** To facilitate joint operations, Air Force ISR liaison officers and expeditionary signals intelligence liaison officers are assigned to multinational divisions in Iraq and to regional commands in Afghanistan, as well as to more specialized units including special operations forces and key brigade combat teams. The result of this presence, especially with ground forces, is better understanding and results for the collection requirements of ground commanders; improved partnering between ground force intelligence staffs, CAOC ISR division analysts, and DGS DART analysts to work time-sensitive analytical questions pertaining to current operations; and exceptional situational awareness for ISR crews regarding the details of current operations in which they will participate. In

from ground forces preparing to deploy, so they fully understand the depth and breadth of capability that will be part of their operations—and are increasing our investment in postdeployment hot washes. We participate in a web of daily conversations with joint and allied forces; some are focused on specific ISR missions, others on work solutions to broader intelligence challenges. Improvements result from a continuous evolution of tactics, techniques, and procedures to keep pace with and in some cases *drive* changes to operational art. Among our most successful recent improvements are advancements in information-sharing (for example, continuing the installation across multiple DGSs of coalition-friendly terminals for better support of operations); innovative software to ensure that users have real-time access to the status of their intelligence requirement; and access to large volumes of imagery even in bandwidth-constrained environments (through the Air Force’s Web-based Imagery Access Solutions capability).

**DCGS Crews.** Perhaps the most enduring aspect of Sentinel, our exploitation crews around the globe turn what is collected from a variety of airborne platforms (U-2, RQ-4, MQ-1, and MQ-9) into usable intelligence. Even here a great degree of specialization takes place. Tailored crews are assembled based on the type of platform and the nature

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*the Air Force has brought responsibility for managing its globally distributed capabilities under one roof to ensure consistent, smart oversight*

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addition, DCGS liaison officers are assigned to CAOCs (and Multi-National Corps–Iraq) conducting major ISR operations, and serve as the 480<sup>th</sup> ISR Wing and DCGS representatives to the combined forces air component commander (and Multi-National Corps–Iraq collection management) to best integrate and synchronize DCGS capability into theater operations.

**Constant Focus on the End User.** Joint and allied warfighter end users are the reasons distributed ISR capability exists. Making our capability user-friendly requires a layered strategy that is search- and contact-friendly (from ensuring our analytical products are globally accessible to creating Web sites on a variety of networks that make answering operational questions easy). We spend significant time hosting intelligence staffs

of the mission. Within each crew, a command and control element ensures accomplishment of mission tasks, while an analytical team works through individual exploitation assignments.

**DGS Analysis and Reporting Team.** A relatively new addition to the Sentinel team, the DART is a key innovation that anchors the global DCGS team geographically. DARTs assigned to each Active-duty DGS specialize in one or more geographic regions. Every DART exists for two primary purposes: to provide external customers with tailored, correlated, higher confidence reporting based on both DCGS analysis and other sources; and to provide DCGS crews with situational awareness on the targets, operations, and requirements that they will execute during the course of their mission.



The DARTs provide detailed, precise analysis that fully leverages multisource intelligence to provide unprecedented insight into theater insurgent activities and aids in shaping the battlespace to our advantage. While we seek to have DGS crews cover targets in their ISR group's area of operation for target continuity, it is not uncommon to have the DART working issues for its respective area while their collocated crews execute missions for one or more areas.

**Wing Operations Center.** The 480<sup>th</sup> WOC coordinates and manages worldwide Air Force processing, exploitation, and dissemination (PED) operations. The WOC mission is both simple and daunting: to

ability of our global ISR team, the WOC produces a daily product called the PED tasking order, a sliding 3-day schedule assigning DGS crews around the globe to planned ISR missions. While the tasking order serves as the foundation for mission accomplishment, it is WOC agility that makes it such a powerful element in distributed operations. As crises materialize anywhere on the globe, the WOC is able to react instantly to related combatant command and C-NAF operational responses requiring Sentinel personnel and to reassign crews as appropriate. In addition, WOC expertise in managing the global Air Force DCGS communications architecture enables extraordinary agility

platforms—teaming as an integrated crew regardless of physical location.

### Making a Difference

While descriptions of the global network-centric ISR enterprise architecture may assist in its understanding, examples and results of how it operates are perhaps more useful in conveying the value of the system to the conduct of modern joint operations. In one particular instance, the DGS-4 DART, in communication with a forward-deployed analytical team that was collocated with an allied partner, received a tip from coalition collection that a terrorist cell was preparing to take action against blue forces. The DART knew their DGS crews would be executing missions in that area later that day and also knew a fellow Air National Guard DGS site was presently operating there. Via chat and other communications means, the DART analyst pushed the intelligence tip to the respective DGS crews as well as the CAOC that was tasking these missions. The Predator was subsequently redirected to the suspected terrorist assembly area where unusual activity was observed. As this was reported back to the ground elements, planning was under way to conduct operations against the terrorists. After operations were completed, the CAOC passed ad hoc requests to the DGS-4 crew to get U-2 battle damage assessment imagery. DGS-4 imagery analysts were able to provide an immediate assessment and confirmation that the strikes were successful.

Another example of the effectiveness of distributed operations occurred early one morning when enemy forces attacked an American base in northern Iraq with mortar fire. Within moments of the attack, Air Force expeditionary signals intelligence liaison officers embedded with force protection elements at the base alerted their Fort Gordon-based counterparts and the ISR mission commander (MC) at DGS-1 to the indirect fire. The Langley-based ISR MC then coordinated Global Hawk collection of both the indirect fire point of origin and impact points while coordinating for Joint Surveillance and Target Attack Radar System Ground Moving Target Indicator data for forensic backtracking. Through constant communication with American-based signals intelligence elements and their forward-based liaison officers, the ISR MC learned a high-value individual, likely related to the indirect fire attack, had been

*the DARTs provide detailed, precise analysis that fully leverages multisource intelligence to provide unprecedented insight into theater insurgent activities and aids in shaping the battlespace to our advantage*

ensure our global Air Force DCGS weapons system is synchronized to meet warfighting requirements around the globe. This team understands the joint operational requirements for DCGS as well as the status of Sentinel crews on a global scale—all the while controlling a worldwide communications architecture that makes our operations possible.

With a sound understanding of joint force commander requirements and the

if any portion of the enterprise suffers an outage.

**Global ISR Platforms.** A complex team and architecture in its own right, the primary platforms that we operate with every day cover a range of capabilities and configurations, from the high-altitude manned U-2 Dragon Lady and the unmanned RQ-4 Global Hawk, to the multirole, medium-altitude MQ-1 Predator and MQ-9 Reaper. We enjoy a close partnership with the teams that fly these

**U-2 Dragon Lady takes off from air base in Southwest Asia**



U.S. Air Force (Brian J. Ellis)

active within 3 nautical miles of the indirect fire point of origin. This global distributed ISR team leveraged a variety of national, joint, and theater capabilities to map out this individual's web—his operating locations and insurgent network—and identified his likely residence for the ISR MC to pursue. The ISR MC then directed DGS-1 imagery analysts to pull national reference imagery of the area surrounding the house and passed the analyzed imagery to direct action elements on scene in Iraq. He began coordinating with both the CAOC and DGS-5, located at Hickam Air Force Base, Hawaii, to get a Predator on scene, and further cross-cued the Global Hawk flying nearby to the individual's residence. The ISR MC also tasked his DCGS DART to research known and probable safe houses the individual could run to. Within minutes, the Global Hawk imagery was beamed to DGS-1, analyzed, and forwarded to direct action elements down range, which were already en route to capture the individual. Three minutes later, an Air Force Predator—piloted by a crew at Creech Air Force Base outside Las Vegas, Nevada, and exploited by Airmen from DGS-5—assumed watch duties. Twenty-five minutes later, direct action forces entered the house and captured the individual. Three hours and 16 minutes—little more than a quarter of the night shift—had elapsed from the time the ISR MC was notified of the indirect fire attack to the arrest—all as a direct result of distributed ISR operations conducted by vigilant Airmen halfway around the world.

## The Way Ahead

The operational success we have enjoyed through distributed ISR operations comes from our significant investment in both human capital and technology in a fashion that constitutes a truly leading edge ISR processing, exploitation, and dissemination capability. The pace of change in the modern battlespace mandates that we combine technology with human innovation to enhance joint interoperability and rapidly optimize combat operations. One of the benefits of distributed operations is the groundswell of innovative ideas gained from partnering every day with forward-deployed engaged forces. Tapping these insights, we are moving toward a future approach in our acquisition and sustainment community that can more rapidly spiral these improvements into our global ISR architecture.

The focus of spiral improvements to DCGS remains on the joint and allied user. With that in mind, we are implementing a three-part improved ISR end-to-end strategy that optimizes direct connectivity from sensor to user, stores and makes the entire sensor output of our collection assets globally accessible across the network, and constantly evolves the products that skilled ISR Airmen create every day for joint/allied operations.

Taking the above course correction that embraces spiral development and implements an improved ISR strategy is critical to joint and allied forces conducting a diverse array of operations and missions. Rapidly improving exploitation and analysis is at the core of delivering DOD DCGS capability. Collaborative, distributed network-centric ISR operations also require the integration of Service DCGS elements to meet the timelines for warfighting information needs. Our goal is to accelerate the partnering among Service DCGS systems to better federate and enhance intelligence exploitation and reporting for joint and allied operations. A critical element of that process is the recent fielding of the DCGS Integration Backbone that enables data-level interoperability and facilitates integration of all Service DCGS elements to increase situational awareness of the battlespace, make ISR information available across the Services, and improve operational effectiveness. Today, we are just scratching the surface on leveraging the DCGS Integration Backbone capability. Future efforts must seek to better integrate ISR operations across the Services, combatant commands, allied partners, and the entire Intelligence Community.

As our coalition partners continue to develop their ISR capabilities, we must be active participants with them in developing a network-centric allied environment to integrate with the DOD DCGS enterprise. This is also the time to imagine the future of distributed ISR operations—one whose capability is an order of magnitude greater than the one we operate today. In addition, it is long past time to rename the DCGS using terms that describe its function. Words matter, and the arcane acronym *DCGS* hinders understanding—and therefore exploitation—of this ISR fusion system. We must rename this system with a term that better captures the depth and breadth of this global ISR warfighting capability.

Sustained commitment to DCGS has enabled a transition from reachback to true distributed ISR operations, creating in the process the first DOD global network-centric weapons system. DCGS is the leading model for executing distributed operations on a global scale as an integral element of ongoing combat missions: hundreds of ISR personnel, working thousands of miles from Afghanistan and Iraq, are delivering actionable intelligence to protect fellow warriors and are engaging the enemy 24/7/365. The Sentinel weapons system allows us to project power and create desired effects without projecting the vulnerability associated with the deployment of the enterprise into the combat zone. As we continue to evolve this foundation of modern warfare, we must capture this new reality in doctrine, training, techniques, and procedures, and joint and Service cultures—taking us beyond a “deployed-only” mindset that sells short the full advantage of our nation's modern warfighting capability and the distributed ISR operators around the globe who make it possible. **JFQ**

## NOTES

<sup>1</sup> The Active-duty Air Force sites are DGS-1, Langley Air Force Base, VA; DGS-2, Beale Air Force Base, CA; DGS-3, Osan Air Base, Republic of Korea; DGS-4, Ramstein Air Base, Germany; and DGS-5, Hickam Air Force Base, HI.

<sup>2</sup> There are four Air National Guard partner sites: DGS-AL, Birmingham Air Guard Station, AL; DGS-AR, Little Rock Air Force Base, AR; DGS-KS, McConnell Air Force Base, KS; and DGS-NV, Reno Air National Guard Base, NV. Two more sites are scheduled for activation in 2009: DGS-IN, Hulman Field, IN; and DGS-MA, Otis Air National Guard Base, MA.

<sup>3</sup> Prior to the realignment, Air Force DCGS was split between Air Combat Command (8<sup>th</sup> Air Force)—the parent command of the 480<sup>th</sup> ISR Wing, U.S. Air Forces—Europe—and Pacific Air Forces, cutting across command chains and combatant command areas of responsibility. This construct was unwieldy and detracted from the major strength of the global network-centric capability of Air Force DCGS.

# Eliminating High Seas Piracy

## Legal and Policy Considerations

By JAMES P. TERRY

**O**n December 16, 2008, the United Nations (UN) Security Council unanimously passed Resolution 1851 authorizing states to mount land-based operations in Somalia against pirate strongholds. This reflects the deep concern of all UN members with respect to the unacceptable level of violence at sea perpetrated by Somali pirates. As noted by then-Secretary of State Condoleezza Rice in her statement in support of the resolution before the council's vote:

*[B]ecause there has been no existing mechanism for states to coordinate their actions, the result has been less than the sum of its parts. . . . We envision a contact group serving as a mechanism to share intelligence, coordinate activities, and reach out to partners, and we look forward to working quickly on that initiative. A second factor limiting our response is the impunity that*

*the pirates enjoy. Piracy currently pays; but worse, pirates pay few costs for their criminality.<sup>1</sup>*

Combating piracy—not only off the coast of Somalia but also in other areas of the Indian Ocean, Gulf of Aden, Gulf of Oman, Arabian Sea, and Red Sea—has been a subject of great U.S. concern for years, although it has been accentuated in recent months. In November 2008, the Saudi supertanker *Sirius Star*, with \$100 million worth of crude oil aboard, was seized by Somali pirates and held for more than 2 months until January 9, 2009, when a \$3 million ransom was paid. Somali pirates held a Ukrainian cargo ship, the *MV Faina*, seized in late September 2008 with 33 tanks and other weaponry aboard, for a similar period until a ransom was paid. These incidents are not unique. In 2008 alone, more than 100 pirate attacks were reported in the busy shipping lanes off eastern and southern Somalia.

### Legal Dimension

There is no question that the increase in acts of piracy emanating from Somali territory over the past year is a reflection of the near state of anarchy plaguing that nation. Nevertheless, nearly all UN member states, in passing Security Council Resolution 1851, underscored that actions to combat this dangerous phenomenon must conform to international law standards, including the Law of the Sea Convention.

The standards for addressing the international crime of piracy, and the available enforcement mechanisms, are not in dispute. Piracy, at its core, encompasses “illegal acts of violence, detention, or depredation committed for private ends by the crew or passengers of a private ship or aircraft in or over international waters against another ship or aircraft or persons or property on board. (Depredation is the act of plundering, robbing or pillaging.)”<sup>2</sup> The 1982 Law of the Sea Convention added to the definition: “any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft,” and “any acts of inciting or intentionally facilitating [such acts].”<sup>3</sup>

In international law, piracy is a crime that can be committed only on or over international waters, including the high seas, exclusive economic zones, international airspace, and other places beyond the territorial jurisdiction of any nation.<sup>4</sup> The same acts committed within the internal waters, territo-

**Sailors from USS *Vella Gulf*, Combined Task Force 151 flagship, apprehend suspected pirates in Gulf of Aden, February 2009**



U.S. Navy (Jason R. Zalasky)

Colonel James P. Terry, USMC (Ret.), is the Chairman of the Board of Veterans Appeals in the Department of Veterans Affairs. He previously served as Principal Deputy Assistant Secretary and Deputy Assistant Secretary in the Department of State and as Legal Counsel to the Chairman of the Joint Chiefs of Staff.



rial sea, or national airspace of a country are within that nation's domestic jurisdiction.

U.S. law addressing the international crime of piracy emanates from the Constitution, which provides that "Congress shall have Power . . . to define and punish piracies and felonies committed on the high seas, and offenses against the Law of Nations."<sup>5</sup> Congressional exercise of this power is set out in Titles 18 and 33 of the United States Code.<sup>6</sup> U.S. law makes criminal the international offense in section 1651 of Title 18, where it states: "Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterward brought into or found in the United States, shall be imprisoned for life."<sup>7</sup>

U.S. statutes further authorize the President to deploy "public armed vessels" to protect U.S. merchant ships from piracy and to instruct the commanders of such vessels to seize any pirate ship that has attempted or committed an act of depredation or piracy against any foreign or U.S. flag vessel in international waters.<sup>8</sup> These sections also authorize issuance of instructions to naval commanders to send into any U.S. port any vessel that is armed or the crew of which is armed, and which shall have "attempted or committed any piratical aggression, search, restraint, depredation, or seizure, upon any vessel," U.S. or foreign flag, or upon U.S. citizens; and to retake any U.S. or foreign vessel or U.S. citizens unlawfully captured on the high seas.

While U.S. law makes criminal those acts proscribed by international law as piracy, other provisions of U.S. municipal law describe related conduct. For example, Federal statutes make criminal the following: arming or serving on privateers,<sup>9</sup> assault by a seaman on a captain so as to prevent him from defending his ship or cargo,<sup>10</sup> unlawfully departing with a vessel within the admiralty jurisdiction,<sup>11</sup> corruption of seamen to unlawfully depart with a ship,<sup>12</sup> receipt of pirate property,<sup>13</sup> and robbery ashore in the course of a pirate cruise.<sup>14</sup>

Under provisions of the High Seas Convention and the Law of the Sea Convention, a pirate vessel or aircraft encountered in or over international waters may be seized and detained only by a nation's warships, military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service.<sup>15</sup> U.S. warships seizing pirate vessels or aircraft are guided by U.S. Navy regulations and the fleet commanders'

basic operational orders.<sup>16</sup> Under this guidance, U.S. authorities may also arrange with another nation to accept and try the pirates and dispose of the pirate vessel or aircraft, since every nation has jurisdiction under international law over acts of piracy.<sup>17</sup>

### UN Effort to Stem Piracy

The UN Security Council has been concerned with the disintegration of Somali government control over its territory since the late 1980s. It has also addressed piracy arising from that state in council resolutions since 1992. In 2008, the Security Council got serious about addressing the piracy issue *directly* and not only in the context of the crisis inland in Somalia. In Resolution 1814 of May 2008, for example, it called upon member states "to take action to protect shipping involved with . . . United Nations authorized activities."<sup>18</sup> This was followed by Resolution 1816 in June 2008, which called upon all nations "to combat piracy and armed robbery at sea off the coast of Somalia."<sup>19</sup>

On October 7, 2008, in Resolution 1838, the Security Council ratcheted up its direction to states with maritime interests. What made this resolution significant was its specific call for "States interested in the security of maritime activities to take part actively in the fight . . . in particular by deploying naval vessels and military aircraft."<sup>20</sup> This resolution further advised all states to issue guidance to their flag shipping on appropriate precautionary measures to protect themselves from attack or actions to take if under attack or threatened with attack when sailing in waters

off the coast of Somalia.<sup>21</sup> On December 2, 2008, after Somali pirates seized the Saudi supertanker *Sirius Star*, the Security Council, in an unprecedented provision in Resolution 1846 under Chapter VII of the Charter (authorizing all necessary means), determined that for a period of 12 months, warships of member nations were permitted to enter Somali territorial waters for the purpose of repressing acts of piracy consistent with such action permitted on the high seas.

The December 2, 2008, resolution, when paired with Resolution 1851 of December 16, 2008, weaves a tight pattern around piracy activities in the waters of the Indian Ocean and Gulf of Aden off the coast of Somalia. In Resolution 1851, moreover, the Security Council went one step beyond authorizing member nations to enter territorial waters when it extended that right to the Somali landmass for the purpose of

### *U.S. law addressing the international crime of piracy emanates from the Constitution*

suppressing piracy. The resolution provides that states and regional organizations can "undertake all necessary measures 'appropriate in Somalia,' to interdict those using Somali territory to plan, facilitate or undertake such acts."<sup>22</sup>

Having dealt with the jurisdictional issues related to operations, the council next addressed the criminal jurisdiction concerns

U.S. Navy (Jason R. Zalesky)



Danish HDMS *Absalon* (foreground), USS *Vella Gulf* (center), and USS *Mahan* are part of Combined Task Force 151 conducting counterpiracy operations near Somalia, February 2009

affecting all nations that happened to take individuals engaged in piracy into custody. In Resolution 1851, states and regional organizations were asked to conclude special agreements with countries willing to take custody of pirates and that were willing to embark law enforcement officials onboard from the latter countries to facilitate the investigation and prosecution of persons detained. Following passage of Resolution 1851, U.S. and allied leaders represented in the Combined Maritime Force agreed to enhance the entire ongoing counterpiracy effort in the U.S. Central Command area of responsibility.

marine insurance for ships transiting the Gulf of Aden. The report found that commercial shippers could require a special war risk insurance premium costing additional tens of thousands of dollars per day, and that these additional costs could adversely impact international trade during the current global economic downturn.

The subcommittee hearing on February 4 provided a comprehensive examination of piracy, to include its prevalence, its current and potential impact on shipping, and the nature and effectiveness of the international efforts being implemented to

of Africa: Partnership and Action Plan<sup>25</sup> (hereafter National Strategy), issued by the National Security Council with the President's approval in December 2008. The National Strategy recognizes that lasting solutions to the piracy problem require significant improvements in governance, rule of law, security, and economic development in Somalia. The strategy is realistic, however, in recognizing that, in light of the current threat, steps can be taken in the near term to deter, counter, and reduce the risk of attacks by Somali pirates. The strategy calls for preventative and precautionary measures that include:

- establishing a senior level contact group of nations that have the political will, operational capability, and resources to combat piracy off the Horn of Africa
- strengthening and encouraging the use of the Maritime Security Patrol Area in the Gulf of Aden
- updating Ship's Security Assessment and Security Plans to harden commercial shipping against pirate attacks
- establishing strategic communications plans to emphasize the destructive effects of piracy on trade and on human and maritime security and to encourage the rule of law.

The second prong of the National Strategy addressed at the hearing looks to interrupt and terminate acts of piracy through effective antipiracy operations. These operations are designed to interdict vessels used by pirates, and where possible to intervene in acts of piracy. The National Strategy also calls for identifying, disrupting, and eliminating pirate bases in Somalia and, to the extent possible, impacting pirate revenue.<sup>26</sup>

The final prong of the National Strategy addressed at the hearing relates to the requirement to hold pirates accountable for their crimes. All participants agreed during the hearing with the statement in the National Strategy that piracy is flourishing because it is highly profitable and nearly consequence-free. For this reason, developing the capacity to capture and successfully prosecute these criminals is critical to combating piracy. To that end, the National Strategy supports the development of agreements and arrangements with states in Africa and around the world that will allow pirates to be captured, detained, and prosecuted.

### *following passage of Resolution 1851, U.S. and allied leaders represented in the Combined Maritime Force agreed to enhance the entire ongoing counterpiracy effort*

#### **Congressional Support**

On February 4, 2009, the House Transportation and Infrastructure Committee in the House held a lengthy hearing on *International Piracy on the High Seas* in its Subcommittee on the Coast Guard and Maritime Transportation. The hearing, the first held by the subcommittee on this subject, was precipitated by a Congressional Research Service report dated December 3, 2008, that focused attention on economic and humanitarian threats posed by pirates to the global seafaring community and the smooth flow of international trade.<sup>23</sup> The specific focus of the report was that, given the marked increase of pirate attacks, the cost of transporting cargo in international waters could rise dramatically because of the sharp increase in ocean

combat this threat. The hearing established that the international community has mounted a multifaceted response in the Gulf of Aden–Indian Ocean region, and that the United States is taking an active role in this effort through its leadership in Combined Task Force (CTF) 151. However, as subcommittee chair Congressman Elijah Cummings (D–MD) stated in his opening remarks, “Given the size of the ocean area that international forces must patrol and their limited manpower, international naval powers are unlikely to be able to protect every ship passing the Horn of Africa from pirates.”<sup>24</sup>

The hearing identified recent actions by the U.S. Government to respond to this threat, including the national strategy document, *Countering Piracy off the Horn*



After U.S. Navy request to check their health and welfare, crew of MV *Faina* stands on deck under watch of armed Somali pirates, November 2008

U.S. Navy (Jason R. Zalasky)

## Operational Response

The Combined Maritime Force (CMF), comprised of ships and assets from more than 20 nations and commanded by a U.S. flag officer from U.S. Naval Forces Central Command, has its headquarters in Manama, Bahrain. On January 8, 2009, the CMF formally established CTF 151 for counterpiracy operations.<sup>27</sup> Previously, in August 2008, the CMF created the Maritime Security Patrol Area in the Gulf of Aden to support international efforts to combat piracy. At that time, the only organization within the multinational CMF tasked with counterpiracy operations was CTF 150, which had been established at the onset of Operation *Enduring Freedom* in Afghanistan.

The mission of CTF 150, however, was focused on the deterrence of all destabilizing activities at sea in the region, with an emphasis on drug smuggling and weapons trafficking. Piracy, although destabilizing, was not a major focus. Moreover, several of the navies of the 20 nations whose assets participated did not have the authority to conduct counterpiracy missions. It was for this reason that CTF 151, with its sole focus on piracy, was established. This would allow CTF 150 assets and the nations supporting this mission to remain focused on drugs and weapons trafficking, while at the same time providing tailored training and operations for the counterpiracy requirement in CTF 151.

The unclassified execute order (EXORD) for CTF 151 was published by the CMF commander on December 30, 2008. The mission of CTF 151 is clear:

3. CTF 151 is to conduct counter piracy operations in the CMF battlespace under a mission-based mandate to actively deter, disrupt and suppress piracy in order to protect global maritime commerce, enhance maritime security and secure freedom of navigation for the benefit of all nations.

This order mirrors the prior authorizations provided in the UN Security Council resolutions described above. It provides that ships of nations cooperating in the counterpiracy operations may board and search vessels where there are reasonable grounds for suspecting the vessels are engaged in piracy; may seize and dispose of these vessels, arms, and equipment used in the commission of piratical acts; and detain those suspected of engaging in piracy with a view to prosecution by competent law enforcement authorities. While the

EXORD authorizes entry into Somali territorial seas by participating warships, nowhere does it grant CTF personnel the authority to enter the land territory of Somalia as provided in UN Security Council Resolution 1851.

Despite this limitation, CTF 151 has deployed highly trained U.S. Navy Visit, Board, Search, and Seizure (VBSS) teams, as well as the Coast Guard's elite Law Enforcement Detachment (LEDET) 405 aboard the command ship USS *San Antonio*.<sup>28</sup> The role of LEDET 405 is to supplement and train the VBSS teams in various maritime interdiction operations mission areas, including maritime law, boarding policies and procedures, evidence collection and preparation, and tactical procedures.

The rapid escalation of armed attacks off the Horn of Africa in the Gulf of Aden and the Indian Ocean has prompted an unprecedented counterpiracy response within the National Security Council, U.S. Congress, United Nations, and the Combined Maritime Force. The December 2008 *Countering Piracy off the Horn of Africa: Partnership and Action Plan*, issued by the National Security Council, is realistic in recognizing that there are steps that can be taken in the near term to deter, counter, and reduce the risk of attacks by Somali pirates.

The United Nations has similarly begun to seriously examine the dangerous conditions in the Gulf of Aden and the Indian Ocean off Somalia's coast. In December 2008, the Security Council unanimously passed two sweeping resolutions that authorized the warships of the multinational Combined Maritime Force to enter both the territorial waters of Somalia and the land territory of that state when necessary to destroy pirate strongholds. These actions and this authority are unprecedented and indicate the deep UN commitment to deal effectively with this threat to international peace and security.

The establishment of Combined Task Force 151 in January 2009 reflects U.S. and allied commitment to provide a choke hold around the actions of pirates off the coast of Somalia. In the Navy's commitment of its Visit, Board, Search, and Seizure teams and the Coast Guard's assignment of its Law Enforcement Detachment unit, moreover, the U.S. military has committed its best.

There is no question that piracy will continue in the highly vulnerable shipping lanes of the Gulf of Aden as long as the rewards outweigh the risks. With the establishment of CTF 151, that equation may be changing. **JFQ**

## NOTES

<sup>1</sup> Condoleezza Rice, remarks at United Nations (UN) Security Council, New York, NY, December 16, 2008.

<sup>2</sup> A.R. Thomas and James C. Duncan, *Annotated Supplement to the Commander's Handbook on the Law of Naval Operations*, sec. 3.5.2 (Newport, RI: Naval War College, 1999), 222–223.

<sup>3</sup> Sec. 101 of the UN Convention on the Law of the Sea, Opened for Signature December 10, 1982, 21 I.L.M. 1261; Art. 15 of the Convention on the High Seas defines piracy in essentially identical terms. See 13 U.S.T. 2312, 450 U.N.T.S. 92, Geneva, April 29, 1958.

<sup>4</sup> Thomas and Duncan.

<sup>5</sup> Art. I, sect. 8, U.S. Constitution.

<sup>6</sup> See 18 U.S.C. 1651–1661 (1996) (piracy); 33 U.S.C. 381–384 (1996) (regulations for the suppression of piracy); and 18 U.S.C. 1654 (1996) (privateering).

<sup>7</sup> 18 U.S.C. 1651 (1996).

<sup>8</sup> 33 U.S.C. 381–384 (1996).

<sup>9</sup> 18 U.S.C. 1654 (1996).

<sup>10</sup> 18 U.S.C. 1655 (1996).

<sup>11</sup> 18 U.S.C. 1656 (1996).

<sup>12</sup> 18 U.S.C. 1657 (1996).

<sup>13</sup> 18 U.S.C. 1660 (1996).

<sup>14</sup> 18 U.S.C. 1661 (1996).

<sup>15</sup> *Ibid.*

<sup>16</sup> Thomas and Duncan, sec. 3.5.3.1.

<sup>17</sup> Art. 19, Convention on the High Seas; Art. 105, UN Convention on the Law of the Sea.

<sup>18</sup> Para. 11, UN Security Council Resolution (UNSCR) 1814 (2008).

<sup>19</sup> Para. 7, UNSCR 1816 (2008).

<sup>20</sup> Para. 2, UNSCR 1838 (2008).

<sup>21</sup> *Ibid.*, Para 6. See also International Maritime Organization (IMO) Resolution A–1002 (25), which requested that IMO member states issue similar guidance to all vessels flying their national ensigns.

<sup>22</sup> Para. 6, UNSCR 1851 (2008).

<sup>23</sup> Rawle O. King, *Ocean Piracy and Its Impact on Insurance*, Report R40081 (Washington, DC: Congressional Research Service, December 3, 2008).

<sup>24</sup> Elijah Cummings, statement before the House Subcommittee on the Coast Guard and Maritime Transportation, Hearing on International Piracy on the High Seas, February 4, 2009, 1.

<sup>25</sup> National Security Council, *Countering Piracy off the Horn of Africa: Partnership and Action Plan* (Washington, DC: The White House, December 2008).

<sup>26</sup> *Ibid.*, 10.

<sup>27</sup> “New Counter-Piracy Task Force Established,” January 8, 2009, accessed at <www.navy.mil/local/cusnc>.

<sup>28</sup> See testimony of RADM William Baumgartner, USCG, before the House Subcommittee on the Coast Guard and Maritime Transportation, Hearing on International Piracy on the High Seas, February 4, 2009, 6.





President Obama talks to Servicemembers and civilians at Camp Lejeune about current policies and exit strategy from Iraq

U.S. Marine Corps (Michael J. Ayotte)

# Charting a **New** U.S.-Iraqi Relationship

By THOMAS C. GREENWOOD, KEVIN M. WOODS,  
and MICHAEL P. FISCHERKELLER

**P**resident Barack Obama's February 27, 2009, speech at Camp Lejeune, North Carolina, officially committed the United States to ending the war in Iraq.<sup>1</sup> After 6 years of fighting—with more than 4,000 Americans and many more Iraqis killed—the announcement was welcomed across America and around much of the world. He appropriately left the required mechanics to achieve his vision—a war termination strategy—to subordinates who are now drafting the necessary plans. This article seeks to crystallize a few guiding principles and ideas that may help them with this task. The central problem is how to demilitarize America's relationship with Iraq by 2011 without creating a strategic vacuum as U.S. forces are brought home.

Those who listened carefully to the President's words could not help but hear his cautionary notes about the challenges ahead. He rightly warned about "Iraq not yet being secure," "difficult days ahead," "likelihood of increased violence," and "a future of more danger, new tests, and unforeseen trials."

## War Termination Begins

This was not public posturing or political hedging. Rather, the President was invoking Lincolnesque language to clearly and soberly convey what he and his closest advisors understand about ending a war—namely, that it is a fragile and difficult process, infinitely more complicated than beginning a war.<sup>2</sup> The President explicitly acknowledged as much when he divulged

that "tactical adjustments" might be required in the future.

The President's speech did more than temper public expectations about the hard road ahead. Notably, he put forth a broad framework and political objectives to help guide policymakers who must now do the real work of crafting a detailed plan that strives to "operationalize" the President's vision. This requires mid-level government professionals to begin the arduous business of trying to match political goals to meaningful action on the ground. To say that the devil is in the

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details would be to trivialize the complex strategy development process that has earnestly begun in Washington, Tampa, and Baghdad. Figuring out how to end the war responsibly is paramount in that endeavor.<sup>3</sup>

### Developing a Strategy

Fortunately, the President's speech provided explicit guidance in four key areas: he defined success, outlined how the nature of the U.S. occupation will transition during the next 3 years, committed the United States to a long-term relationship with Iraq, and announced the beginning of a new era in the Middle East by calling for a comprehensive regional approach to major issues. It is worthwhile to examine each of these in greater detail.

First, the President defined *success* in Iraq as more than simply bringing U.S. combat troops home by August 31, 2010, and withdrawing *all remaining* U.S. forces by the end of 2011. Granted, these dates grabbed the headlines, but before mentioning either, the President said:

*This strategy is grounded in a clear and achievable goal shared by the Iraqi people and the American people: an Iraq that is sovereign, stable, and self-reliant. To achieve that goal we will work to promote an Iraqi government that is just, representative, and accountable, and that provides neither support nor safe-haven to terrorists.*

The word *democracy* was not used in the speech, and the word *peaceful* was used primarily in an external context—how well Iraq gets along with its neighbors—rather than emphasizing internal security. This implies that stability is not necessarily an absence of violence—only of widespread violence that might cause mass casualties, undermine the central government's legitimacy, or rekindle civil war. In fact, the President pragmatically recast U.S. objectives in Iraq from an ambitious to a more modest level. He noted that Iraq will have to police its own streets, achieve its own political union (for example, political reconciliation), and ultimately take charge of its own affairs. While America seeks a lasting relationship, that relationship will no longer be one defined by an open-ended military commitment.

Second, the President described the U.S. role in Iraq as transitioning from a focus on combat operations to a focus on helping Iraqi leaders practice good governance. Iraq must develop legitimate institutions that do

not depend on the United States; however, the President pledged “a strong political, diplomatic, and civilian effort on our part [that] can advance progress and help lay a foundation for lasting peace and security.”

The process of shifting the main U.S. effort from security to governance began months ago. Nevertheless, the President emphasized that theme—noting that just as the United States has supported Iraqi Security Forces (ISF), it will continue to help strengthen Iraq's rule of law, fight corruption, and improve the delivery of basic services.

Third, the President spoke with conviction about America's long-term relationship with Iraq, stressing that the United States is not walking away. For example, he discussed how resolving the issue of refugees is a vital

those who might have doubted the President's sense of obligation to friends and allies, this portion of the speech was an important statement about the credibility of U.S. commitments.

Finally, the President announced the beginning of a new era in American leadership and engagement across the greater Middle East. He declared that his administration would break with the past and use a comprehensive approach to engage all nations across the region with “sustained diplomacy on behalf of a more peaceful and prosperous Iraq.” This includes engaging Iran and Syria. By pursuing regional dialogues on a wide range of issues, the United States will help Iraq establish “productive and normalized” relations with its neighbors.

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*the word democracy was not used in the Obama speech, and the word peaceful was used primarily in an external context*

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part of Iraq's reconciliation and recovery—one in which “America has a strategic interest—and a moral responsibility—to act . . . provide more assistance and take steps to increase international support for countries already hosting refugees.”

Later in his address, when speaking directly to the Iraqi people, President Obama talked passionately about Iraq and the United States building a lasting relationship founded on shared interests and mutual respect. For

In summary, the President's speech was bold, balanced, and reassuring. He spoke unambiguously about the need to recognize Iraq's sovereignty and to transfer full responsibility for its security to the ISF while continuing to support it with advisors for the next 3 years. Additionally, the President made clear that the United States will continue to engage Iraq diplomatically, politically, and economically in the long term. Finally, his remarks instilled confidence by reassuring diverse

Iraqi firefighters during training exercise in Baghdad



U.S. Air Force (Paul Villanueva II)

constituencies—the Iraqi people, Iraq’s neighbors, the American people, the U.S. diplomatic corps, and the U.S. military—that responsibly ending the role of the U.S. Armed Forces in Iraq will protect their equities and ensure their sacrifices were not in vain. And on the chance that al Qaeda and other enemies were listening, the President also made it clear that he has no intention of allowing hard-won gains in Iraq to unravel or slip away.

Yet for all its clarity, the speech omitted detailed discussion of some of the major challenges that lie ahead for the United States and the government of Iraq as they work together to end the war during the next 3 years. In addition to supporting ongoing ISF development, the following issues require significant attention in order to meet the President’s goals:

- cooperating with a sovereign and co-equal Iraq
- adopting a new strategic narrative
- creating and sustaining an in-country support capability
- helping Iraq reintegrate into the region.

### **A Sovereign and Co-equal Iraq**

In 2003, Iraq became the junior partner in an unequal relationship with the United States, which, as the occupying power, assumed responsibility for Iraq’s sovereignty. That changed on November 17, 2008, when both governments signed two historic agreements: the Strategic Framework Agreement for a Relationship of Friendship and Cooperation between the United States of America and the Republic of Iraq (SFA) and the Agreement between the United States of America and the Republic of Iraq on the Withdrawal of United States Forces from Iraq and the Organization of Their Activities during Their Temporary Presence in Iraq (Security Agreement).

In signing the SFA, both countries committed to establishing a long-term relationship of cooperation and friendship, based on equality in sovereignty and respect for the rights and principles reflected in the United Nations Charter and international law. Primarily diplomatic and political in nature, the SFA outlines four major principles:

- a relationship of cooperation based on mutual respect, international law, noninterference in Iraq’s internal affairs, and rejection of the use of violence to settle disputes
- a stable Iraq capable of its own self-defense

■ the temporary presence of U.S. forces at the request and invitation of the sovereign government of Iraq and with full respect for Iraq’s sovereignty

■ prohibition against the United States using Iraq as a launching or transit point for attacks on other countries and against seeking or requesting permanent bases or a permanent military presence in Iraq.

Next, the SFA outlines seven areas of cooperation between the two countries:

- political and diplomatic
- defense and security
- cultural
- economic and energy
- health and environment
- information technology and communications
- law enforcement and judicial.

The SFA provides terms of reference for each category. For example, in the area of health and environmental cooperation, the United States agreed to support Iraq’s efforts to train Iraqi health and medical personnel.

To implement the SFA, both countries agreed to participate in a Higher Coordinating Committee and to form functional joint coordination committees to work in Baghdad. These bodies are intended to develop common objectives, consult regularly, supervise program implementation, and resolve disputes as necessary.

Knowing what is in the SFA is necessary to appreciate its strategic significance. Namely, the SFA commits the United States to helping Iraq build effective civil institutions over the long term in each of the seven areas. Those who worry that withdrawing U.S. troops terminates America’s relationship with Iraq can take comfort from knowing that the SFA will remain in effect until one of the signatories petitions in writing to terminate it. Likewise, the SFA termination clause provides a modicum of relief to those who believe that the United States may have obligated itself to a costly and endless nationbuilding mission in Iraq. In short, a sterling attribute of the SFA is its inherent flexibility to serve future U.S. interests in Iraq and to support the goals that President Obama articulated.

The Security Agreement, which with the SFA became effective on January 1, 2009, is perhaps better known than the SFA due to media attention on the specified deadline for

the withdrawal of U.S. forces. That said, the Security Agreement contains a host of other provisions that have already begun to change the character of the U.S. presence and nature of the U.S.-Iraq relationship. These changes will continue to evolve during the next 3 years. Some of the agreement’s key provisions are that:

■ Iraq exercises jurisdiction over members of the U.S. forces and of the civilian component who commit certain crimes.

■ U.S. forces may not detain or arrest personnel without the permission of the government of Iraq.

■ Offensive military operations cannot be conducted without the permission of the government of Iraq.

■ U.S. forces may not search houses or other real estate properties except by order of an Iraqi judicial warrant and in full coordination with the government of Iraq.

■ All U.S. forces shall withdraw from Iraqi cities, villages, and other localities no later than June 30, 2009.

In short, the two agreements together elevate Iraq’s status to that of a sovereign and coequal state while relegating U.S. forces from the position of an occupying power to that of an invited guest, with diminished authority and no jurisdiction over the Iraqi people.

The United States faces several challenges in trying to cooperate with a newly sovereign and coequal Iraq during the war termination process. First, both agreements require a major attitudinal shift on the part of all U.S. military personnel and civilian contractors, who have been accustomed to being the dominant actors for the past 5 years. Previously, quickly responding to actionable intelligence was necessary to achieving tactical success. Now, gaining the advance permission of Iraqi authorities is necessary to achieving strategic success. Conflict between tactical and strategic goals is inevitable, so strong and enlightened U.S. leadership is required to avoid major rifts between the two governments.

To this end, it will be necessary to balance short-term security risks against long-term political needs, especially as U.S. combat forces draw down. Likely spikes in violence during the next 3 years—especially in the wake of the upcoming national elections—must not become the rationale for the United States to ignore or unilaterally suspend burdensome parts of the agreements for reasons



of operational expediency. Should this occur, it would create a not unreasonable perception that the United States still regards Iraq as a junior (read *inferior*) partner. Being seen as disrespecting Iraq's sovereignty would serve no useful purpose for the United States, and would provide Iraq's political factions as well as regional adversaries with fodder to accuse the United States of violating the agreements.

Moreover, the United States must exercise strategic patience: it must refrain from meddling in Iraq's internal political affairs in an attempt to produce outcomes perceived as compatible with U.S. interests. As the President emphasized in his speech, the United States will not "let the pursuit of the perfect stand in the way of achievable goals." This does not mean the United States should step back from actively engaging Iraq's political and military leaders on critical issues. But it does mean that Washington will have to learn to take no for an answer more often and allow Iraq greater latitude in exercising self-determination than has been customary in recent years.

If the United States fails to meet this challenge, it is not likely that Iraq will want to renew the Security Agreement when it expires in 2011, or even to continue participating in the SFA. In short, U.S. long-term interests will be ill served if American actions and words during the next 3 years alienate a new generation of Iraqi leaders or deny Iraqi politicians the opportunity to exercise their full sovereignty.

### New Strategic Narrative

President Obama began defining a new strategic narrative in his speech when he said to the Iraqi people:

*The United States pursues no claim on your territory or your resources. We respect your sovereignty and the tremendous sacrifices you have made for your country. We seek a full transition to Iraqi responsibility for the security of your country. And going forward, we can build a lasting relationship founded upon mutual interests and mutual respect as Iraq takes its rightful place in the community of nations.*

To understand why the President's words are so important, we must go back to 2003. Then, the United States alleged that Iraq was developing weapons of mass destruction that threatened the security of the region and Europe and that a link existed between

Baghdad and al Qaeda. Subsequent events did not support these assertions.

Since then, the narrative espoused by our enemies has been that the United States invaded Iraq to seize control of an Arab country, deliberately tried to weaken the Arab and Muslim world and steal Iraq's oil, and used Iraq as an operating base from which to defend Israel and launch attacks against other countries in the region.

U.S. Air Force (JoAnn S. Makinano)



**Iraqi National Police general talks with market vendors during patrol with U.S. Soldiers in Mosul**

Unfortunately, this distorted narrative was widely accepted across the Middle East where it continues to resonate today. The enemies' portrayal of U.S. actions in the years since Saddam Hussein was deposed has advanced their cause. Assertions of shifting rationales to support open-ended military

create one that builds on the President's words and is reinforced daily by American actions on the ground, both military and civilian, for the next 3 years. In short, implementing the letter and spirit of the agreements can help restore America's tarnished image. It can also help generate domestic support for resources that would sustain a normalized relationship with Iraq and other states in the region.

Yet caution is in order when discussing the idea of strategic narrative—an often ill-defined and poorly understood concept that is loosely used as a euphemism for public affairs, information operations, strategic communications, propaganda, or media spin. It is none of these things.

*spikes in violence during the next 3 years must not become the rationale for the United States to ignore or unilaterally suspend burdensome parts of the agreements for reasons of operational expediency*

operations, increased U.S. troop levels, slow reconstruction and restoration of essential services, escalating tensions with Iran, and a perceived unwillingness to compel Israel to treat the Palestinians more humanely have undermined U.S. credibility. The acceptance of U.S. policy has suffered in consequence—in Iraq and throughout the region.

Now, the United States has an opportunity to "reset" the strategic narrative—to

To paraphrase Michael Vlahos, if sacred narrative is a storyline about a people's national identity writ large, then strategic narrative is the expression of that storyline in the practice of foreign affairs and security policy.<sup>4</sup> Strategic narrative is four things:

- what we do
- what we say are the reasons behind what we do

- how others perceive what we do
- how others interpret our rationalizations of why we say we acted as we did.

The key idea is this: if the latter two do not align with the former two, then a credibility gap occurs that erodes U.S. acceptance and legitimacy. For this reason, “talking points” or “messaging strategies” decoupled from verifiable actions are almost always ineffective. As Vlahos notes, “Narrative is not an explainer alone, it is also a maker.”<sup>5</sup> In short, words and deeds must be aligned or strategic dissonance will prevail.

Accordingly, if the United States wants the world to adopt a new strategic narrative for Iraq and the greater Middle East, it must move beyond the President’s helpful opening salvo and do the following three things: clearly articulate current U.S. goals and objectives in Iraq, make real progress on the Israel-Palestine peace front, and initi-

ate a concerted outreach program with the Muslim world.

First, U.S. goals and objectives in Iraq have changed since the Obama administration took office. As noted above, the President redefined what success in Iraq means during his recent speech. Success will be an Iraq that is “sovereign, stable, and self-reliant . . . just, representative, and accountable, and that provides neither support nor safe-haven to terrorists.” To this, we recommend adding the following objectives:

- an Iraq capable of protecting its citizens from internal and external threats
- an Iraq at peace with its neighbors and that contributes to regional security
- an Iraq that partners with the United States in a long-term relationship.

Certainly, this list could be modified or expanded. But the key point is that the

Obama administration needs to review, modify as appropriate, and promulgate U.S. goals and objectives for Iraq as often as possible to the general public.

Second, the United States must aggressively press ahead with policies that recognize the central role the Israeli-Palestinian conflict plays in the Middle East. Despite any progress in Iraq, pursuing U.S. interests in the region will be diluted, if not completely undercut, by a failure to make marked advances on this pivotal issue. The pursuit of progress that results in lasting peace will require even-handed treatment as the United States reestablishes itself as an honest broker on this issue.

Finally, the United States needs to embark on a concerted outreach campaign to the Muslim community. Space does not permit a detailed explication of initiatives that are warranted in this area. A good point of departure could be for senior White House officials—if not the President himself—to meet with the U.S.-Muslim Engagement Project. Their four pillars are deserving of implementation.<sup>6</sup>

### In-country Support Capability

In the 15-month interval between when the last U.S. *combat* forces leave Iraq (August 31, 2010) and when *all remaining* U.S. military personnel withdraw (end of 2011), the President stated that a U.S. transition force of 35,000 to 50,000 personnel will continue

### *U.S. goals and objectives in Iraq have changed since the Obama administration took office*

to support Iraq. It will do so in three areas: training, advising, and assisting the ISF; conducting targeted counterterrorism missions; and protecting U.S. personnel participating in civil-military projects.

Excluding support personnel and civilian contractors, the core of the transition force will consist of headquarters personnel assigned to a single military command (U.S. Forces-Iraq), a division headquarters, and several Advisory Assistance Brigades (AABs) located throughout the country. As the name implies, AABs will be task-organized or tailored units whose primary mission will be to provide critical support—administrative, logistical, medical, aviation, and emergency reinforcement—to U.S. advisors embedded with the ISF. AABs will also be able to sustain much of the successful Civil Affairs

U.S. Air Force (Dilla Ayala)



Airmen distribute Humvees to Iraqi army and police forces at Camp Taji



work currently performed by Army Brigade Combat Teams (BCTs) and their Marine Corps equivalents.<sup>7</sup>

But what will happen after 2011 when the AABs come home? Who will take over responsibility for helping the Iraqi air force and navy reach their initial operating capabilities by 2015 (at the earliest)?<sup>8</sup> Who will sustain the rural development and local governance projects now supervised by the U.S. Department of State's Provincial Reconstruction Teams (PRTs)? Moreover, who will continue to mentor civilian government ministries in Baghdad? In short, how can the United States avoid creating a strategic vacuum in American influence across Iraq when all military forces are withdrawn?

There are two schools of thought on this. One claims that by the end of 2011, Iraq should assume full responsibility for its own affairs—and that, after 8 years of U.S. support, Iraq should negotiate with international corporations and other foreign governments for additional technical and advisory assistance it may require. Proponents of this view argue that the deteriorating U.S. economy, coupled with competing war demands from Afghanistan, make it impractical for the United States to continue any level of development assistance, to say nothing of nationbuilding, after 2011. Accordingly, the U.S. Ambassador to Iraq and his Country Team should take the baton from the commander, U.S. Forces–Iraq, and move to normalize the U.S.–Iraq relationship along the lines of the traditional diplomatic model that the United States uses in other countries.

Bennett Ramberg, who supports full withdrawal, recently wrote in *Foreign Affairs*, “Washington can swallow its pride and follow the lessons of Vietnam, Cambodia, Lebanon, and Somalia: when internal political dysfunction overwhelms external attempts at stabilization, getting out sooner rather than later is the United States’ best chance to protect its interests.”<sup>9</sup>

Perhaps, but Ramberg misses two critical points. First, fragile and failed states that the United States abandons after abortive interventions seem to return with a vengeance to haunt the international community. Two of his four examples—Lebanon and Somalia—are arguably greater sources of violence and instability today than they were in 1983 and 1992, respectively. With Somalia alone, the threat that Somali pirates pose to international shipping and the Federal Bureau of

Investigation manhunt now under way to find U.S. citizens of Somali origin—potentially recruited as suicide bombers *inside* the United States—seem to undercut Ramberg’s argument that going home early solves geostrategic problems. Perhaps a less disingenuous thesis might have been, “Pay me now, or pay me later . . . but pay you will.”

Second, Ramberg implies that military force, or hard power, is the only instrument at America’s disposal to be committed to, sustained in, or withdrawn from these messy conflicts. This was probably true in Lebanon and Somalia where civil wars had not yet burned out sufficiently to allow both warring factions to reconcile and the United States to introduce the soft power tools needed to pursue stabilization and reconstruction. But in postconflict situations with low levels of violence, such as Haiti in 1995 or Iraq in 2009, the opportunity to constructively surge U.S. soft power instruments to consolidate the gains achieved by U.S. military forces is reasonably high. However, policymakers must recognize that a “window of opportunity” exists for implementing such a surge, and, more importantly, the civilian capacity must exist to be able to deploy forward within a reasonably short time. Today, these are problematic.

The opposing school of thought contends that by the end of 2011, Iraq will not yet be a “normal” country—that it will still be a fragile state that could easily backslide into chaos and civil war. Moreover, given the U.S. investment in blood and treasure, this school contends that it would be irresponsible for America to rely on a conventional Embassy approach—similar to Paris and Rome—with a state just emerging from conflict. Proponents of this view contend that given America’s energy needs and geopolitical concerns about Iran, it is not in the national interest to allow other powers to trump American influence in Iraq and the Middle East. In short, this school of thought seeks a solution that will retain the benefits accrued from a country-wide presence (as with BCTs) that has been made both smaller and more civilian.

It appears that President Obama was thinking along the same lines when he stated, “We must use all elements of American power to achieve our objectives, which is why I am committed to building our civilian national security capacity so that the burden is not continually pushed to our military.”

The President’s instincts are arguably right and subscribe to the second school of

thought discussed above. For these reasons, we recommend that policymakers consider a seamless transition from AABs to a network of Regional Embassy Offices (REOs) across Iraq. The REOs would be located near critical sectarian fault lines and major lines of communication. They would facilitate development programs, monitor and report on the delivery of essential services, support citizen participation in the political process, and encourage the rule of law. Ideally, REOs would serve as interagency “lily pads” and act as the “eyes and ears” for the U.S. Ambassador and his robust Embassy staff in Baghdad in order to focus and monitor U.S. efforts. Obviously, close cooperation with the Department of Defense would be necessary given the security, intelligence, and liaison support required at each location.<sup>10</sup>

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*the U.S. Ambassador should take the baton from the commander, U.S. Forces–Iraq, and move to normalize the U.S.–Iraq relationship along the lines of the traditional diplomatic model*

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Critics of this idea likely will focus on three arguments. First, they will contend that mobile teams operating from the main U.S. Embassy in Baghdad could accomplish the same mission more economically than permanent REOs. If cost and efficiency were the only metrics that mattered, we might agree. But stabilizing a nation in the aftermath of a protracted insurgency requires close and continuous interaction with the host nation’s populace. This has been amply demonstrated time and time again by BCTs and PRTs, and it will no doubt prove true once more after AABs take over. For this reason, we recommend against a post-2011 engagement strategy that relies on Embassy personnel commuting from Baghdad.

Second, critics will argue there are too few resources available in the Department of State to make REOs a reality. This may be true today; however, with imagination, foresight, and bold action, it need not be the case in 2011. And importantly, there is a foundation upon which to build. By increasing resources available to the Office of the Coordinator for Reconstruction and Stabilization, it could be transformed into a sustainable global planning organization that has its own action arm—a



standing civilian expeditionary response element with significant numbers of active and standby components of the Civilian Response Corps—elements of which could be deployed to Iraq to experiment with an REO “proof of concept.” This approach would have value outside Iraq as well by providing the United States with a quick response civilian capability that could conduct sustained overseas operations in fragile and failed states.

Of course, other agencies besides the Department of State should help staff the REOs. Representatives from the Departments of Justice, Interior, Agriculture, Energy, Education, and Treasury all possess vital knowledge and skill sets that the REOs need.

to Iraq’s long-term prosperity. If this does not occur, then the personnel slated to man the REOs could be assigned to the U.S. Embassy in Baghdad on a rotational basis or used in other contingencies.

### Reintegration into the Region

Reintegrating Iraq into the Middle East region is essential to its stability, security, and prosperity—and to the region’s. This is not an easy task given its checkered history with its neighbors. Moreover, Iraq’s increasingly open, democratic, and traditionally secular regime challenges the legitimacy of neighboring authoritarian states.

Still, there is ample opportunity for Iraq

undertaking joint border security initiatives. Some progress has already been made on these initiatives, but major breakthroughs are less important in these areas than the trust and respect that will be engendered among the participating nations.

Second, Iraq’s economic reintegration will expand trade and generate increased demand for the cross-border flow of goods and services. This will reduce unemployment and strengthen business ties. It is important to remember that the GCC currently ranks as the world’s 16<sup>th</sup> largest economy, and, if growth patterns continue at current rates, it should become the 6<sup>th</sup> largest by 2030.<sup>11</sup> Moreover, as Iraq modernizes its oil infrastructure

*as trust grows, it is plausible that Baghdad would come to appreciate the critical role American Embassy satellite offices would play in sustaining programs vital to Iraq’s long-term prosperity*

and expands its agricultural sector, regional markets will flourish, stimulating long-term economic growth and prosperity.

In the area of collective security, small projects should be pursued to bolster confidence in cooperative ventures between neighboring states. Currently, there are overlapping mutual defense needs in areas such as maritime security patrols, intelligence-sharing, and officer exchange programs. Perhaps over time these endeavors could be expanded to include annual military exercises, a cooperative regional air defense system, and counterterrorism efforts.

Security initiatives take time to mature. Nevertheless, there is some promise that a comprehensive approach to regional security could mitigate Iraq’s perceived need to unilaterally fund a modern, combined arms military at a time when it faces other pressing domestic needs. Collective security is no panacea. By sharing its regional defense responsibilities with its neighbors in some niche areas, however, Iraq could reduce the overall burden as Secretary of Defense Robert Gates publicly noted during the 2008 Manama Dialogue in Bahrain.<sup>12</sup>

Finally, there is Iran, whose radical ideology, support to terrorists, and ambitions to militarize nuclear power have polarized much



Marines train Iraqi army commandos in basic infantry tactics, Camp Ripper

U.S. Marine Corps (Eric C. Schwartz)

However, given Iraq’s regional differences, REOs should not attempt to mirror one another. Rather, they should be tailored to best meet the needs of the local population and environment. This means personnel quotas may be unequally distributed across the U.S. Government.

Third, critics will argue that Iraq will not accept REOs because of sovereignty and for cultural and religious reasons. Were the idea presented today, this might be true. But as trust grows between the United States and Iraq during the next 3 years, it is entirely plausible that Baghdad would come to appreciate the critical role these American Embassy satellite offices would play in sustaining programs vital

to cooperate with its neighbors bilaterally and multilaterally across a range of political, economic, and security issues. Initially, the primary goal of these cooperative undertakings should be to stimulate regional discussion, focus confidence-building measures on achievable aims, and identify issues on which Iraq and its neighbors (especially Turkey and the Gulf Cooperation Council [GCC]) are willing to engage.

For starters, the United States can demonstrate its commitment to peaceful diplomacy by redoubling its efforts to get Iraq’s neighbors to reopen embassies in Baghdad. Moreover, the United States should assist Iraq in reopening its own diplomatic offices around the region, facilitating refugee returns, and

of the world in opposition against it. Iran continues to exert malign influence on Iraq's domestic affairs in hopes of inciting sectarian unrest to undermine or weaken the central government's authority. Tehran seeks to create an Iraq that will defer to its geostrategic aspirations and spurn U.S. overtures to form an enduring strategic partnership that would enhance U.S. influence in the region.

While none of this is good news, the United States must be careful not to exaggerate the nonnuclear threat Iran poses to its neighbors, with many of whom it continues to trade and enjoy diplomatic relations. Reintegrating Iraq into the region so it can collaborate with likeminded states in collective security initiatives would be an important component of a broader strategy intended to defeat deleterious influences and balance other forms of Iranian expansionism.

In this regard, it is important that the United States continues to reassure Saudi Arabia, the Gulf states, Jordan, Egypt, and Iraq with credible security guarantees that counterbalance the most threatening aspects of Iran's behavior. Given U.S. power projection dominance, it is probably unnecessary to permanently forward-base large numbers of U.S. forces in the region. However, a robust, combined annual exercise program that showcases improved Arab warfighting capabilities integrated with U.S. forces in a common defensive strategy would help deter Iran in a meaningful way.

## Endgame

President Obama's vision for ending U.S. participation in the Iraq War is achievable in our opinion. Now, the United States must adopt a war termination strategy that best serves the policy goals he has laid out. The challenge is to demilitarize America's relationship with Iraq by 2011 without creating a strategic vacuum once the last U.S. forces come home.

This is only possible if nonmilitary elements of U.S. power remain engaged inside Iraq in a meaningful way after the U.S. military leaves. For this to happen, the United States must cooperate with a sovereign and co-equal Iraq over the next 3 years in a way that builds trust, inspires both countries to fully participate in the SFA, and encourages Iraq to invite the United States to sign a new Security Agreement after 2011. The latter is necessary to formalizing a long-term strategic partnership between the two countries.

A key component of any new Security Agreement would be Baghdad's request that Washington leave behind an in-country support capability to help Iraq more effectively execute the seven areas outlined in the SFA. We believe such a U.S. capability should be structured around REOs that can serve as satellite offices for Embassy Baghdad—whole-of-government operating nodes—to foster the "success" President Obama defined.

Combined with a new strategic narrative, a U.S. in-country support capability could serve to increase the credibility of American policies and their acceptance by the Arab and Muslim worlds. The new narrative requires U.S. goals and objectives in Iraq to be clearly articulated, an expanded and improved outreach campaign with the world's Muslim community, and progress on the Israel-Palestinian issue. Additionally, a new strategic narrative will help reintegrate Iraq politically, economically, and militarily into the region—securing its future and eliciting the U.S. domestic support and resources required to protect U.S. long-term interests.

While there is no guarantee that recent security gains in Iraq will hold until 2011 even with BCTs and AABs on the ground, it is clear that U.S. forces continue to have a stabilizing influence and prevent the return of al Qaeda. This is a key reason why Iraq has not asked the United States to withdraw forces earlier. But when the last U.S. troops depart, the potential for a strategic vacuum is significant unless the United States plans now for an alternative. We think REOs or a similar structure that retains U.S. civilian presence at the local level are needed to successfully transition the U.S. presence from AABs to traditional Embassy operations (a single Embassy in Baghdad) and "win the peace" in Iraq. **JFQ**

## NOTES

<sup>1</sup> "Remarks of President Barack Obama—Responsibly Ending the War in Iraq," Camp Lejeune, North Carolina, February 27, 2009, available at <[www.whitehouse.gov/the\\_press\\_office/Remarks-of-President-Barack-Obama-Responsibly-Ending-the-War-in-Iraq/](http://www.whitehouse.gov/the_press_office/Remarks-of-President-Barack-Obama-Responsibly-Ending-the-War-in-Iraq/)>.

<sup>2</sup> Fred Charles Iklé, *Every War Must End*, 2<sup>d</sup> rev. ed. (New York: Columbia University Press, 2005), 16.

<sup>3</sup> *War termination* in this article is defined as a transition of ways and means toward the achieve-

ment of U.S. objectives. The authors use the phrase confident that some level of conflict within Iraq and between Iraqis will continue after the implementation of the SFA, Security Agreement, and the new U.S. policy. The long history of this region and the fundamental nature of its challenges make any other expectation unrealistic.

<sup>4</sup> Michael Vlahos, *Fighting Identity: Sacred War and World Change* (Westport, CT: Praeger Security International, 2009), 162–163.

<sup>5</sup> *Ibid.*, 2.

<sup>6</sup> U.S. Muslim Engagement Project, *Changing Course: New Directions for U.S. Relations with the Muslim World* (Washington, DC: Search for Common Ground and the Consensus Building Institute, September 2008). The four pillars are elevate diplomacy as the primary tool for resolving key conflicts involving Muslim countries, engaging both allies and adversaries in dialogue; support efforts to improve governance and promote civic participation in Muslim countries, and advocate for principles rather than parties in their internal political contests; help catalyze job-creating growth in Muslim countries to benefit both the United States and the Muslim countries' economies; and improve mutual respect and understanding between Americans and Muslims around the world.

<sup>7</sup> Robert M. Gates, *Meet the Press*, March 1, 2009, available at <[www.defenselink.mil/transcripts/](http://www.defenselink.mil/transcripts/)>. This same point was explicated in a February 27, 2009, memorandum from General Raymond Odierno, USA, to Multi-National Force—Iraq (MNF–I), available at <[www.mnf-iraq.com/](http://www.mnf-iraq.com/)>.

<sup>8</sup> Nasier Abadi via interpreter, MNF–I Press Conference, November 2, 2008, available at <[www.mnf-iraq.com/images/stories/Press\\_briefings/2008/november/081102\\_transcript.pdf](http://www.mnf-iraq.com/images/stories/Press_briefings/2008/november/081102_transcript.pdf)>.

<sup>9</sup> Bennett Ramberg, "The Precedents for Withdrawal: From Vietnam to Iraq," *Foreign Affairs* (March–April 2009), 2–8.

<sup>10</sup> The United States currently has regional Embassy offices in Hillah and Basrah, consistent with the Vienna Convention on Diplomatic Relations (1961) mission architecture. In Hillah, the office serves as an administrative and logistical support platform for Provincial Reconstruction Teams and U.S. Government agencies and organizations. We are proposing offices that are far more robust interagency entities.

<sup>11</sup> Kristin Smith Diwan, "The Perils of Partial Openings," *Middle East Policy* 15 (Winter 2008), 153.

<sup>12</sup> Robert M. Gates, qtd. in Loveday Morris, "The Manama Dialogue," International Institute for Strategic Studies, December 13, 2008, available at <[www.iiss.org/whats-new/iiss-in-the-press/press-coverage-2008/december-2008/gates-calls-for-gcc-to-embrace-iraq/](http://www.iiss.org/whats-new/iiss-in-the-press/press-coverage-2008/december-2008/gates-calls-for-gcc-to-embrace-iraq/)>.



# Hard Day's Night

## A Retrospective on the American Intervention in Somalia

By R. D. HOOKER, JR.

**A**lmost a generation has passed since the tragic events of October 3, 1993, when 18 American Soldiers died in the streets of Mogadishu. The fallout from Somalia was both severe and long lasting. It brought a halt to the aggressive multilateralism that initially gripped the Clinton administration, preventing any response to the Rwandan genocide that followed just months later. It limited the range of possible responses to crises in Bosnia and later Kosovo. It severely jolted the Nation's confidence in its national security leadership. It shook the Clinton administration to its roots and destroyed its Secretary of Defense. And it induced an excessive caution and hesitancy in U.S. foreign and security policy that powerfully inhibited the administration's response to repeated acts of terrorism. In ways large and small, Somalia held American foreign policy in its grip for the rest of the decade.

DOD (Terry Mitchell)

Marines surround weapons  
cantonment of warlord Mohammed  
Farah Aideed, Mogadishu





America lost heavily that day, both in human terms and in international standing. The causes of the disaster were both political and military and existed at every stage: at the national strategic level, where policy objectives and the goals to be pursued were fundamentally and tragically vague and ambiguous; at the operational level, where the size and composition of U.S. forces in Somalia, the command relationships established, and the missions assigned were fatally flawed; and on the ground, where secrecy, organizational rivalry, and hubris combined lethally to bring about disaster. In the years since, the heroism and fortitude of the Soldiers who fought there have been celebrated. But the deeper lessons of the Somalia debacle remain painfully obscure.

### Background to Intervention

American involvement in Somalia grew out of a preexisting Cold War fear of Soviet intervention in the Horn of Africa. Emerging from British and Italian colonialism in 1962, Somalia quickly succumbed to tribal strife. Under General Siad Barre, military dictator from 1969 until his ouster in 1991, Somalia embraced socialism and Soviet assistance until Moscow's tilt toward Ethiopia in the mid-1980s. Thereafter, Somalia inclined toward U.S. sponsorship, receiving arms and assistance before degenerating into civil war in 1990. In January of 1991, Barre was defeated by General Mohammed Farah Aidede, leader of the Habr Gidr subclan and a product of Italian and Soviet military schooling, with Barre fleeing into exile in Nigeria. A victorious Aidede occupied south Mogadishu, the capital and only major port of entry in the country. For the next year, rival clans battled for supremacy before agreeing to an uneasy ceasefire on March 3, 1992.

By that time, the international community stood horrified at the images of mass starvation beamed into its living rooms by the news media. Up to 300,000 Somalis are thought to have perished in the year preceding the ceasefire. One authoritative government source reported the probable death of 25 percent of all Somali children.<sup>1</sup> In April, a small team of unarmed United Nations (UN) observers arrived to monitor the ceasefire, and in August the first UN Operation in Somalia (UNOSOM I) began.

Supported by U.S. flights out of Mombassa, Kenya, and a Pakistani troop presence

at the port of Mogadishu, UNOSOM I (called Operation *Provide Relief* by the U.S. military) faltered quickly. Although large quantities of relief supplies arrived in Somalia, they were rapidly looted or hijacked, while relief workers and personnel from nongovernmental organizations (NGOs) were assaulted and killed. Aid workers operating inside Somalia reported that food supplies were being intentionally denied to targeted populations and rival clans, spawning a manmade famine of epic proportions. In the fall, the UN reassessed its operations and called for major troop contingents from participating countries to provide military security for the humanitarian assistance mission.

### A Promising Start

At this point, President George H.W. Bush made the fateful decision to lead a large-scale international intervention to halt the mass starvation that had shocked the world. President Bush seemed personally moved by the vast scale of the suffering in Somalia; having lost his bid for reelection, Mr. Bush could garner no political benefit or advantages from intervention, and no American vital interests were engaged. His guidance was simple and direct: get in fast and stop the dying. The administration policy focused almost exclusively on providing security for humanitarian assistance, with no mention of nationbuilding or long-term stability operations.<sup>2</sup>

Beginning in early December, large numbers of U.S. troops began moving toward the Horn of Africa. At month's end, more than 28,000 Marines and Soldiers from the 1<sup>st</sup> Marine Expeditionary Force (I MEF) and 10<sup>th</sup> Mountain Division had arrived. The Unified Task Force (UNITAF) was established under I MEF commander, Lieutenant General Robert Johnston, who controlled all U.S. and UN forces.

Based in Mogadishu but with major elements in outlying cities, such as Bale Dogle, Baidoa, Oddur, Merca, and Kismayu, and supported by 10,000 coalition soldiers from 24 countries, UNITAF quickly established order. The force that went into Somalia that December was muscular and well armed, with liberal rules of engagement that allowed U.S. Soldiers to engage any armed Somalis thought to pose a threat.<sup>3</sup>

In addition to overwhelming military force, the American-led intervention featured a small but experienced diplomatic

effort, headed by U.S. Special Envoy Robert Oakley. With experience as a senior National Security Council staffer and Ambassador to Pakistan, Zaire, and Somalia, Oakley was well known to the major faction leaders and well versed in internal Somali politics and rivalries.<sup>4</sup> Significantly, Oakley's U.S. Liaison Office (USLO) (in the absence of a functioning central government there was no U.S. Embassy) was sited near Aidede's personal residence in south Mogadishu and was guarded by only six U.S. Marines.

On the ground, both Johnston and Oakley worked to coordinate political and military efforts to rush humanitarian assistance to threatened areas. Military officers were seconded to Oakley's staff, and UNITAF provided senior, experienced liaison officers to meet regularly with USLO, UN, and NGO agencies. Both military and civilian representatives worked together in Civil-Military Operations Centers in the capital and in outlying areas to plan and execute humanitarian assistance operations. Somalia was organized into large Humanitarian Relief Sectors, each placed under a capable coalition unit, to ease coordination and command and control challenges.<sup>5</sup>

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Somali leaders were brought together frequently in the neutral setting of the USLO compound to hammer out solutions to local conflicts in meetings brokered by Oakley.

At the outset, Somali faction leaders were told politely but firmly that, while the intention was not to impose any particular ruler or system of government in Somalia, no armed threat would be permitted to challenge U.S. or UN troops. All "technicals" (that is, civilian trucks and vehicles modified to mount heavy weapons) were required to be stored in monitored cantonment areas, and no weapons could be carried visibly in public.

The results were immediate and dramatic. Within a month, massive amounts of food aid were flowing freely, and the death toll from starvation had dropped exponentially. Armed clashes between warring

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factions had declined precipitously, and U.S. casualties were low. Although nominally a UN operation, Operation *Restore Hope* was clearly a U.S.-led effort. Both Aideed and Ali Mahdi, anxious to position themselves as future national leaders with U.S. backing, generally cooperated with U.S.-sponsored initiatives to encourage local and regional collaboration. In Mogadishu and elsewhere, joint councils actually emerged to manage port operations, police functions, and other forms of public administration.

components, clear political guidance, and a distinct policy of noninterference in the murky waters of local Somali politics. While attempts were made to support local and national reconciliation to ease clan rivalry and support humanitarian assistance, nationbuilding was never allowed to emerge as a primary goal. In sharp contrast, the UNOSOM II effort (dubbed Operation *Continue Hope* by U.S. military planners) envisioned indefinite time horizons, far weaker military forces, more ambitious and ambiguous political goals, and a more idealistic

political reconciliation goals and charged UNOSOM II to disarm the Somali clans, a fateful step that presaged the failures that would soon follow.

To ensure U.S. control, retired Admiral Jonathan Howe was named to head UNOSOM II as the Secretary General's special representative. Howe had recently served as deputy National Security Advisor and was therefore experienced in the interagency process and, presumably, read in on the complexities of the mission in Somalia. Polished and articulate, as

*the focus changed from "stopping the dying" to rebuilding Somali national institutions, infrastructure, and political consciousness*

a military officer he represented both nonpartisanship and a willingness to take direction and follow orders. Major General Thomas Montgomery, a tank officer serving on the Army staff, was named as commander of U.S. Forces in Somalia and deputy commander of UNOSOM II's military forces (under Turkish Lieutenant General Cevik Bir). Significantly, however, UNOSOM II lacked a trained military staff and important communications and intelligence systems. Even Montgomery's own U.S. combat forces were placed under U.S. Central Command (USCENTCOM) operational control, 7,000 miles away. An ad hoc organization beset with conflicting national agendas and interests, UNOSOM II was poorly suited to conduct major combat operations. Very quickly, things began to go wrong.

Driven by a strong desire to pull U.S. forces out, American troop presence in Somalia declined from 17,000 in mid-March to 4,500 in early June as UNITAF disbanded and I MEF went home. Although many coalition units remained, most of the credible combat capability resident in Somalia left with the Americans. This dramatic reduction in U.S. military force coincided with aggressive actions to force various Somali militias to disarm. As Aideed ruled south Mogadishu with his Somali National Alliance (SNA), where UN forces were concentrated, UNOSOM II pressed the Habr Gidr hard. Predictably, there was resistance, and UNOSOM II began to take casualties. Almost immediately, national contingents began to suspend activities that placed them at risk of reprisal. Increasingly, Howe and Mont-



**U.S. Embassy compound in Mogadishu, location of Headquarters, Joint Task Force Operation *Restore Hope***

The process was not smooth. Simmering clan tensions and occasional clashes persisted, and attempts to encourage cooperation between rival factions failed as often as they succeeded. Still, the primary task of "stopping the dying" was a major success. Throughout, the U.S. approach was consistent and focused: do not take sides, concentrate on the humanitarian mission, and avoid direct confrontation where possible—and when not, act forcefully and directly. By the end of President Bush's term of office on January 20, 1993, death by starvation had largely ceased and open clan warfare had diminished drastically.

### **Change of Mission**

The U.S. mission to Somalia, Operation *Restore Hope*, changed dramatically after President Bill Clinton's inauguration. The operation had been characterized by a short-term focus, overwhelming force, close cooperation and liaison between its political and military

and ideological tone and character. Under President Bush, the mission was humanitarian assistance. Under President Clinton, the mission would become far more expansive.

The nature of the U.S. mission in Somalia began to change almost from the day President Clinton took office. His national security team lacked experience but not confidence,<sup>6</sup> and within weeks of the inauguration, a strong shift in policy began to emerge. The focus now changed from "stopping the dying" to rebuilding Somali national institutions, infrastructure, and political consciousness; from the United States to the UN; and from overwhelming military force to the smallest possible American military footprint.<sup>7</sup> On March 26, 1993, U.S. Ambassador to the United Nations Madeleine Albright voted in favor of UN Security Council Resolution 814, creating a successor organization in Somalia, UNOSOM II. Among other things, the resolution committed the UN to more expansive national reconstruction and



gomery turned to the lone remaining U.S. light infantry battalion for the hard missions.

On June 5, in an attempt to search one of Aided's heavy weapons storage areas, a Pakistani unit was badly mauled. In a lengthy firefight, Aided's militia killed 23 and wounded 59. UNOSOM II's Malaysian armor and the American Quick Reaction Force (QRF) were unable to intervene in time to prevent the heavy loss of life. From that date, everything changed in Somalia.

Both the UN and U.S. Government reacted heatedly. On June 6, the UN Security Council approved a resolution explicitly calling for the "arrest and detention for prosecution, trial and punishment" of the perpetrators of the attack on the Pakistanis.<sup>8</sup> Despite later attempts to distance the Clinton administration from this action, there is little doubt that the U.S. Government not only supported but also forcefully promoted this response.<sup>9</sup>

Howe immediately requested special operations forces, and while the administration pondered a response, UNOSOM II stepped up its operations against Aided. In mid-June, U.S. forces attacked a radio station and ammunition dumps and struck targets throughout the city with AC-130 Spectre gunships.<sup>10</sup> On July 12, U.S. forces conducted

a major raid on the "Abdi house," the scene of a meeting of SNA leaders to discuss UN reconciliation proposals. Many were not in agreement with Aided and were supportive of efforts to end the tribal infighting and encourage foreign aid and investment. Nevertheless, ground troops and Cobra helicopters firing heavy antiarmor missiles destroyed the building with heavy loss of life. Fifty-four Somalis were killed, and in the ensuing rioting, four Western journalists attempting to cover the event were torn apart by the enraged crowd.<sup>11</sup> The Abdi house raid went far to unify Aided's people solidly against the Americans and raised the conflict to a new level. Its importance in changing Somali attitudes is hard to overstate.

On August 8, a remotely detonated antitank mine (similar to improvised explosive devices commonly used in Iraq) killed 4 Americans, and similar attacks on August 19 and 22 wounded 10 more. Mogadishu was fast becoming a free fire zone, and as hostilities escalated, President Clinton approved the dispatch of the Joint Special Operations Command (JSOC) along with a 440-Soldier Joint Special Operations Task Force.

Called Task Force (TF) Ranger, this composite unit was built around a rifle company

and battalion headquarters element from the 75<sup>th</sup> Ranger Regiment, a detachment from the Army's famed Delta Force, and an aviation element from the 160<sup>th</sup> Special Operations Aviation Regiment (SOAR), equipped with MH60 Black Hawk utility helicopters and MH6 and AH6 "Little Bird" light helicopters. Small numbers of communicators, Air Force combat controllers and pararescue Airmen, and SEALs were included. TF Ranger, led by JSOC commander Major General William F. Garrison, did not report to General Montgomery as commander of U.S. Forces in Somalia. Instead, as a "strategic asset," it reported directly to USCENTCOM in Tampa, Florida.<sup>12</sup>

Upon arrival, TF Ranger immediately went to work, conducting its first raid against "leadership targets" on August 30. Five other raids took place in September. All were based on short-fuse intelligence and followed a similar tactical pattern: an insertion by MH60 and MH6 helicopters, with Rangers forming an outer perimeter and Delta operators conducting the actual prisoner snatch, supported by a ground convoy to extract detainees and covered by AH6s aloft. These operations met with mixed success. In one, Aided's financier and right-hand man, Osman Otto, was captured. But others betrayed the spotty human

**Marine Armored Amphibious Vehicles emerge from surf onto beach at Mogadishu Airport**



DOD (Terry Mitchell)



intelligence available to the Americans. In separate instances, the Rangers moved against the headquarters of the UN development program and the offices of *Medicins sans Frontiers* and World Concern, leading aid agencies working in Mogadishu.<sup>13</sup> Another raid netted the former Mogadishu police chief, well known as a neutral player and not aligned with Aided.<sup>14</sup> As with the raid on the Abdi house, poor human intelligence and a lack of situational awareness plagued TF Ranger operations. Significantly, there was little or no coordination between Garrison and Montgomery.

Supporting intelligence structures also deserve comment. A USCENTCOM intelligence assessment team traveled to Mogadishu in June 1993 and reported that the capture of Aided was “viable and feasible,” though in private, team members described the task as “extremely ugly . . . with numerous potential points of failure.” Regrettably, the USCENTCOM Intelligence Support Element (CISE) in Mogadishu experienced 100 percent turnover in the third week of September 1993. New arrivals were provided an “uneven” transition. JSOC intelligence officers later reported that CISE support to TF Ranger was “minimal,” with a poor focus on critical human intelligence.<sup>15</sup>

### The Gloves Come Off

In mid-September, the commanding general of the 10<sup>th</sup> Mountain Division, Major General Dave Mead, sent an explosive personal message to the Chief of Staff of the Army.

(This message, a P4 in military parlance, has never before been made available to the public.) Visiting his troops in Mogadishu, Mead was shocked at what he found:

*Mogadishu is not under our control. Somalia is full of danger. The momentum and boldness of Aided are the prime concern. The trendlines are in the wrong direction. Thus the mission overall and the security of the U.S. Force are threatened.*<sup>16</sup>

Mead went on to describe how hundreds of armed Somalis had attacked U.S. combat engineers and Pakistani tank crews in a major

*poor human intelligence and a lack of situational awareness plagued Task Force Ranger operations*

fight along the 21<sup>st</sup> of October Road in Mogadishu on September 9. In that engagement, two rifle companies from the QRF infantry battalion rushed to the scene, only to be forced back to their compound under heavy fire. Despite severe losses, Aided’s militia men fought hard and aggressively that day in the face of helicopter gunships, UN armor, and several hundred U.S. infantrymen.

As Mead grasped after only a few days on the ground, conditions in Mogadishu had deteriorated

dramatically. Aided was well aware of the American manhunt and reward offered for his capture. On multiple occasions, he had demonstrated a readiness to take the Americans on directly, despite their advantages in firepower. The national contingents showed no stomach for the campaign to “get” Aided; a number had in fact negotiated private agreements after the Pakistani massacre. With a very limited U.S. force on the ground, UNOSOM II and its American backers were in real trouble:

*This war is the United States versus Aided. We are getting no significant support from any UN country. The war is not going well now and there is no evidence we will win in the end. We have regressed to old ways. Our efforts are not characterized by the use of overwhelming force, not characterized by a commitment to decisive results and victory, not designed to seize the initiative, and there is no simultaneous application of combat power, and not a plan to win quick. All this has the smell and feel of Vietnam, Waco and Lebanon.*<sup>17</sup>

General Montgomery, the on-scene commander, apparently did not express the same level of alarm in his reports to General Joseph Hoar, USMC, at USCENTCOM or to UN headquarters in New York. But he was sufficiently worried to request a major addition to his force, in the form of an American mechanized infantry battalion task force equipped with main battle tanks and artillery. This request reached USCENTCOM in mid-month



DOD (Perry Heimer)

**LtGen Robert Johnston and Ambassador Robert Oakley (center) greet Congressmen and diplomat arriving to visit troops in Somalia**



**Ambassador Oakley visits Marines, Mogadishu**

and was refused on the grounds that increasing the U.S. “footprint” in Somalia ran counter to the prevailing trends of policy. Montgomery resubmitted a scaled-down version, now asking for a reinforced company of Bradley fighting vehicles and tanks. This time Hoar agreed to pass the request to the Pentagon.

To their credit, the Joint Chiefs of Staff recommended approval, and the Chairman forwarded the request to Secretary of Defense Les Aspin. The public record does not show that the military leadership pressed hard, however, and given the Clinton administration’s clear intent at the time to downsize the U.S. presence and hand off the mission altogether to the UN—the hunt for Aideded notwithstanding—Aspin’s decision to deny Montgomery’s request was perhaps predictable.

Even as TF Ranger pursued its search for Aideded, other diplomatic venues were being explored. One involved an attempt to open a channel to Aideded using former President Jimmy Carter, who supposedly enjoyed a previous “relationship” with Aideded and had volunteered to act as an intermediary. Although a legitimate policy initiative, this approach was never communicated to the military leadership in Washington, at USCENTCOM headquarters in Tampa, or in Mogadishu. Whether Aideded would have agreed to give up his aspirations to lead Somalia

is doubtful; his most likely motives were to buy time, tone down American pressure, and wait for the inevitable U.S. withdrawal. In any case, the Carter initiative was stillborn. Something was about to happen that would change everything.

### Battle of the Black Sea

Mark Bowden’s bestselling *Black Hawk Down*, later adapted into an action movie by Ridley Scott, brought the intimate details of October 3 to a national and even global audience. The day began with reports that a number of key Aideded lieutenants planned to meet at the Olympia Hotel, not far from the Bukhara arms market on Hawlwadig Road. Repeating the mission profile that had been used several times previously, TF Ranger launched 160 special operations force (SOF) soldiers (Rangers, Delta operators, SOF aircrew, and a small number of SEALs and Air Force pararescue specialists) in 16 helicopters and 12 vehicles at 3:30 in the afternoon. (Approximately 110 were inserted by helicopter.) Contrary to some reports, only cursory notification—not preliminary coordination—took place between TF Ranger and UNOSOM II or the QRF. General Garrison notified General Montgomery of the raid as it was being launched, leaving no opportunity for joint mission rehearsals, exchange of communications plans, or discussion of relief operations or linkup procedures under fire.<sup>18</sup>

Confident that the mission would be over in an hour, normal mission-essential equipment such as night vision goggles, body armor, and even water was in many cases left behind.<sup>19</sup> Although operating on the same tactical battlefield, both the Rangers and Delta Force maintained separate chains of command, with the senior Delta officer aloft in a command and control aircraft and the senior Ranger commander (Lieutenant Colonel Dan McKnight) in charge of the ground vehicle convoy. On the objective, a Ranger captain and a Delta captain commanded their respective elements, but neither was designated as the on-scene ground commander.

General Garrison exercised overall command from his operations center at the airfield.

Although Somali lookouts reported the launch of the aircraft carrying the raid force, the operation went according to plan until a 160 SOAR Black Hawk, call sign “Super 61,” was shot down about 50 minutes into the mission. (The Somalis fired volleys of rocket-propelled grenades [RPGs] at low-flying aircraft throughout the battle with great success, especially against the larger and less nimble Black Hawks.) This event disrupted the orderly extraction of the Somali detainees and gave Aideded’s militia forces, and hundreds of angry armed civilians, time to flood into the area. Shortly thereafter, a second MH60 (“Super 64”) was shot down. The lone Combat Search and Rescue helicopter (“Super 68”) was able to insert its medics and Ranger security force at the first crash site, but was badly damaged by RPG fire and returned to base. There was no viable preexisting plan to react to a second downed aircraft.

The raid now became a full-fledged battle, later dubbed the Battle of the Black Sea by the SNA. The ground vehicle convoy carrying the captured SNA leaders, led by the Ranger battalion commander, attempted to respond but came under intense close-range fire without reaching the second crash site and was forced to return to the airfield with

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*Somali National Alliance militia and armed civilian irregulars were underrated by General Garrison and his special operations staff officers*

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many dead and wounded. A second smaller Ranger column then moved out from the airfield in vehicles but was beaten back not far from its start point. At this point, one rifle company from Montgomery’s QRF was moved to the American-held airfield and attempted to relieve the embattled SOF troopers, but could not advance in the furious city fighting and returned to base. Several hours into the mission, TF Ranger found itself clustered around the two crash sites or pinned down inside several buildings along Marehan Road, unable to disengage from the swarming Somali militia and civilian crowds and unwilling to withdraw without the bodies of their comrades in the downed aircraft.

Unquestionably, the SNA militia and armed civilian irregulars who participated in the battle were underrated by General Garrison



President George H.W. Bush with LtGen Johnston during visit to Somalia



and his special operations staff officers and commanders. Although poorly equipped and undisciplined to American eyes, many were hardened by years of combat. Their ability to mass quickly and fight in large numbers with determination and courage had been amply demonstrated in the days and weeks preceding the October 3 raid. The local SNA commander, Colonel Sharif Hassan Giumale, had trained for 3 years in Russia and later in Italy, fought in the Ogaden against Ethiopia, and commanded a brigade in the SNA before joining Aided during the civil war.<sup>20</sup> A number of his subordinates were similarly experienced. Well equipped with RPGs and small arms, they had noted the American tactical pattern and its weaknesses. And they were fighting in their own neighborhoods, in front of their families and their clan leaders. Their effectiveness would be grudgingly admitted after the fight, if not before.

At this point, near sundown, the survival of the raid force was very much in question. Dozens had been killed and wounded, at least two separate rescue attempts had failed, more armed Somalis were arriving by the hour, and ammunition was running dangerously low. Of the seven troop-carrying Black Hawks available, five were no longer flyable. Several special operations soldiers died in the field because medical evacuation by air or ground was impossible. Although Aided's fighters had suffered serious losses, they maintained relentless pressure on the Americans through the night. By most accounts, only the dauntless actions of the AH6 Little Bird pilots, flying all night long, kept the besieged Americans alive until morning.

As night fell, General Garrison concluded that the survival of the force was at risk and requested assistance from UNOSOM II. Over 4 hours, U.S. liaison officers worked feverishly to coordinate a rescue force consisting of Malaysian armored personnel carriers, Pakistani tanks, and two companies from the QRF infantry battalion of the 10<sup>th</sup> Mountain Division. The 70-vehicle rescue force, accompanied by special operations personnel from Garrison's headquarters and TF Ranger support units, moved out at 11:15 p.m. and painfully fought its way to the encircled Rangers and Delta operators, reaching them at 1:55 a.m.<sup>21</sup>

Most of the survivors were wounded by this point. Moving in vehicles and on foot, and carrying their dead and wounded, the dazed Americans retreated to a soccer stadium just outside the combat zone as dawn broke over

Mogadishu. Though they had fought hard to recover their dead, the bodies of Randy Shugart and Gary Gordon, as well as the dead aircrew and Delta passengers of Super 61 and Super 64, remained behind. Of the TF Ranger troops who had come to Somalia and entered the fight, 17 were dead. 106 were wounded. The Rangers were particularly hard hit, with almost every participant killed or wounded. It was, as the British say, a hard day for the Regiment.<sup>22</sup>

Although General Garrison attempted to portray the mission as a success on the grounds that the targeted SNA leaders had been captured, the raid quickly came to be seen as a military and political fiasco. Almost immediately, the Clinton administration came under fierce criticism. Even as a heavy mechanized force was quickly sent in to stabilize the situation, TF Ranger departed and the hunt for Aided was quietly dropped. The following spring, U.S. forces pulled out of Mogadishu for good.

### Postmortem

The causes of failure in Mogadishu were not apparent only in hindsight. In many cases, they were fundamental, even blatant; they could, and should, have been identified in advance. Military and civilian leaders in decisionmaking positions bear a heavy share of responsibility for a flawed and ultimately failed policy, and for the unnecessary deaths on all sides that resulted. Our tragic experience in Somalia provides critical lessons for military and civilian leaders who bear similar responsibilities for planning and conducting contingency operations now and in the future.

At the political and strategic level, the Clinton administration failed to provide specific, coherent goals and objectives that could be translated into concrete tasks and missions on the ground in Somalia. If the policy objective was "the restoration of an entire country," then the trust and confidence placed in the UN was *misplaced*, while the resources provided by the United States were manifestly inadequate. In particular, the decision to disarm the clans, beginning with Aided, was pregnant with consequence. It forced the United States and UN to abandon the neutrality that had helped make *Restore Hope* successful at a time when American military power was growing weaker every day. And it drew the modest U.S. forces in Somalia into high-intensity combat operations for which they were not prepared or equipped. The June 5 slaughter of the Pakistanis may or may not have been planned in advance, but the battle lines had been drawn between Aided

and the United States well before then. Whatever options applied before that date went up in smoke as soon as the extent of the tragedy became apparent. UNOSOM II now faced only two choices: to retaliate by taking down Aided, or to get out of Somalia.

Inside the Beltway, an air of detachment prevailed. No real attempt was made to secure congressional or popular support, an oversight that caused immediate policy failure when casualties mounted. Requests for forces from field commanders were airily dismissed. Long on rhetoric and short on detail, easily distracted by the pressures of domestic politics and other foreign policy challenges and opportunities, the Clinton national security team lost focus on perhaps the most dangerous foreign policy issue then in play. There was a ground truth about conditions in Somalia waiting to be grasped. The military commanders there saw it clearly. But somewhere between the gutted U.S. compound in Mogadishu and the West Wing, that reality evaporated.

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*the causes of failure in Mogadishu were fundamental, even blatant; they could, and should, have been identified in advance*

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At the operational level, the command relationships established to control forces in Mogadishu proved almost tragicomic. The USCENTCOM commander in Tampa exercised operational control of two separate combat forces, Garrison's TF Ranger and the 10<sup>th</sup> Mountain Division QRF. Those threads came together *only* in Tampa. No command relationship existed between the two, though they were located 5 minutes apart.<sup>23</sup> The commander of U.S. Forces in Somalia exercised no operational authority over any combat forces; at best he could "borrow" the QRF for short periods, subject to USCENTCOM approval. The failure to designate one officer to command U.S. combat forces in Mogadishu stemmed from the desire of the combatant commander to remain "in charge" and contributed directly to the loss of life in the battle of October 3 and 4. The presence of two major generals, each commanding no more than a few hundred combatants, in the same city during the same ferocious engagement, and linked by little more than their good intentions, predictably caused confusion and delay.



Operational level planning and the resources made available based on it were also badly flawed. As General Mead clearly pointed out, the situation in Mogadishu in September had dramatically changed for the worse. The U.S. forces present there were too small and too lightly armed for the mission. General Montgomery's request for heavy reinforcements lends support to this assessment, as does the urgent decision to send them in force days after the battle. General Garrison's request for return of the AC-130 gunships is a similar case in point. U.S. forces manifestly required reinforcement, yet military leaders in the chain of command failed to make a vigorous case—with painful and damaging results.

Tactically, SOF in Somalia, lacking context and situational awareness, suffered from overconfidence (Mead's communication shows fairly clearly that the conventional force did not). Virtually all of the advantages possessed by the U.S. military were thrown away: a small force went into a massive urban area, in daylight, without surprise, against greatly superior numbers, without adequate fire support, good intelligence, or a strong reserve. Under these conditions, a well-trained, well-equipped U.S. force with a clear technology overmatch fought at every disadvantage, suffered appalling losses, and came close to annihilation. These risks were run not because hard intelligence had located Aided, but to attempt the capture of a few midlevel subordinates.

Many tactical errors were fundamental: the failure by TF Ranger to adequately brief and rehearse the 10<sup>th</sup> Mountain QRF; the decision by small unit leaders to leave behind mission-essential equipment;<sup>24</sup> the bifurcated command relationships both inside and outside TF Ranger (which ensured that even individual soldiers fighting in the same room reported to different leaders from different organizations); the repeated use of the same mission template, which allowed the enemy to learn and adapt to American tactics;<sup>25</sup> poor operational security that telegraphed the start of the raid; the use of fragile and thin-skinned helicopters at low level over the city in daylight; the failure to plan for the loss of multiple aircraft (not unlikely given the mission profile); the poor intelligence picture on the capabilities and intentions of the SNA; and the hesitation shown in requesting immediate assistance from the UN all reflect poorly on the commanders involved in planning and executing the raid. The American Soldiers who fought the Battle of the Black Sea

deserve every accolade bestowed on them. But they paid dearly for such glory.

The lessons of Somalia are hard, but they are clear. Political leaders must be unambiguous about defining the mission and the conditions for success. Congressional and public support is important and deserves effort and attention. The means provided must be sufficient to the task in size and capability. Multiple, competing chains of command do not work; a single joint commander should be empowered to conduct operations and trusted, not second-guessed. Senior commanders an ocean away cannot control local tactical operations and should not try. Finally, the Soldier on the ground in contact with an enemy deserves every advantage America can provide.

The biggest lesson from Somalia is also the simplest. The fight that took place on October 3, 1993, in Mogadishu was a small unit action, a local tactical operation similar to the several that preceded it. But its effects were devastating to the administration, to the Nation, and to American foreign policy. Whenever U.S. Soldiers go in harm's way, they carry America's prestige and credibility with them. If they fail, America's enemies are emboldened and empowered. American power and influence can suffer dramatically for years to come, with impacts that reach far beyond the original mission or policy. America saw that on Marehan Road, now many years ago. We ought not take that road again. **JFQ**

## NOTES

<sup>1</sup> This report came from Andrew S. Natsios, then-administrator for the U.S. Agency for International Development.

<sup>2</sup> Robert B. Oakley, "An Envoy's Perspective," *Joint Force Quarterly* (Autumn 1993), 45.

<sup>3</sup> See General Joseph Hoar, USMC, "A CINC's Perspective," *Joint Force Quarterly* (Autumn 1993), 59.

<sup>4</sup> At the time, Oakley was in retirement and held the distinction of being one of only four "Career Ambassadors," the highest rank in the foreign officer hierarchy.

<sup>5</sup> Jonathan T. Dworken, "RESTORE HOPE: Coordinating Relief Operations," *Joint Force Quarterly* (Summer 1995), 15.

<sup>6</sup> The inexperience in senior government of key players in framing policy toward Somalia is vital to understanding what transpired. Secretary of Defense Les Aspin and U.S. Ambassador to the United

Nations (UN) Madeleine Albright had never held senior executive branch positions. National Security Advisor Anthony Lake had served for many years in academe and took little interest in Somalia until the crisis erupted.

<sup>7</sup> Richard J. Norton, "Somalia II," in *Case Studies in Policy Making and Implementation*, ed. David A. Williams, 6<sup>th</sup> ed. (Newport, RI: U.S. Naval War College, 2002), 168. See also Dorcas Eva McCoy, "American Post-Cold War Images and Foreign Policy Preferences toward 'Dependent' States: A Case Study of Somalia," *World Affairs* (Summer 2000), 2.

<sup>8</sup> UN Security Council Resolution 837.

<sup>9</sup> Norton, 178.

<sup>10</sup> J. Marcus Hicks, *Fire in the City: Airpower in Urban, Smaller-Scale Contingencies* (Maxwell Air Force Base, AL: School of Advanced Airpower Studies, June 1999), 74. After the loss of one Spectre gunship, caused when a 105mm round went off in the breach of the gun while in flight, the AC-130s were withdrawn. A subsequent request from General Garrison for their return was denied by Secretary Aspin.

<sup>11</sup> George Monbiot, "Both saviour and victim: Black Hawk Down creates a new and dangerous myth of American nationhood," *The Guardian*, January 29, 2002.

<sup>12</sup> Norton, 172.

<sup>13</sup> Monbiot, 2.

<sup>14</sup> Norton, 172.

<sup>15</sup> James T. Faust, *Task Force Ranger in Somalia* (Carlisle, PA: U.S. Army War College Personal Experience Monograph, March 1999), 13.

<sup>16</sup> Personal message from commanding general, 10<sup>th</sup> Mountain Division, to the Army Chief of Staff, September 15, 1993, 1.

<sup>17</sup> *Ibid.*, 8.

<sup>18</sup> Information provided to author by staff officer personally present in the UNOSOM II headquarters at the time.

<sup>19</sup> Mark Bowden, *Black Hawk Down* (New York: Penguin Books, 1999), 39.

<sup>20</sup> Rick Atkinson, "The Raid That Went Wrong," *The Washington Post*, January 30, 1994, A1.

<sup>21</sup> Rick Atkinson, "Night of a Thousand Casualties," *The Washington Post*, January 31, 1994, A1.

<sup>22</sup> Somali leaders put their losses at 314 dead and 814 wounded. See Atkinson, "Night of a Thousand Casualties." Atkinson traveled to Mogadishu after the battle and personally interviewed SNA leaders.

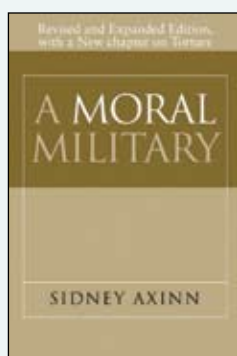
<sup>23</sup> Interview with a U.S. staff officer assigned to the U.S. Forces Somalia command group in Mogadishu at the time.

<sup>24</sup> Bowden, 39.

<sup>25</sup> Atkinson, "The Raid That Went Wrong," A1.

# Off the Shelf

Given the increasing incidence of insurgency, terrorism, piracy, and other threats from nonstate actors across the globe, a wealth of scholarly investigation and analysis into the tradition of just war and the use of military force is being produced. Here are several of the more recent volumes that military and interagency leaders should find useful.



**A Moral Military: Revised and Expanded Edition, with a New Chapter on Torture**  
by Sidney Axinn  
Philadelphia: Temple University Press, 2009  
256 pp. \$74.50  
ISBN: 978-1-59213-957-6

Sidney Axinn has updated and expanded the original 1990 version of his classic on morality in military activity. In a readable style, Axinn covers the gamut of ethical and moral problems associated with the military and conduct of war, ranging from whether a Soldier should ever disobey an order, to the use of torture, nuclear weapons, and restrictions on how to fight. One of the book's many strengths is its organization into easily consumed chapters and sections that can be quickly referenced with the detailed table of contents or index.

*A Moral Military* is a veritable handbook on the moral conduct of war that will help leaders formulate acceptable plans and make principled

decisions in this new era of fighting terrorists and irregular conflicts. It should be mandatory reading for military leaders, national security strategists, and policymakers.



**Waging Humanitarian War: The Ethics, Law, and Politics of Humanitarian Intervention**  
by Eric A. Heinze  
Albany: State University of New York Press, 2009  
224 pp. \$65.00  
ISBN: 978-0-7914-7695-6

In recent decades, the U.S. military has participated in United Nations, North Atlantic Treaty Organization (NATO), and unilateral peace and humanitarian assistance operations. Why? When should the United States initiate such operations? When are we morally compelled to do so? Does U.S. support of an international effort to relieve suffering or reinstate peace or stability matter? What are the effects of such operations? Eric Heinze explores these and other tough questions in this examination of the ethical,

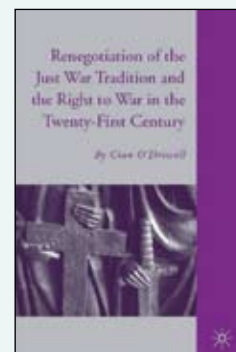
legal, and political dimensions of military intervention for humanitarian reasons. Heinze uses the NATO intervention in Kosovo in 1999, 2003 invasion of Iraq, and crisis in Darfur as case studies. He acknowledges that waging humanitarian war is always a risky proposition and one that is not likely to solve underlying problems such as ethnic hatred, poverty, or poor governance. Heinze concludes that the use of the military element of national power may still be mandated, requested, or otherwise required, but should only be undertaken when it will not, in the long run, make the situation worse.



**Ethics and International Affairs: A Reader, Third Edition**  
Edited by Joel H. Rosenthal and Christian Barry  
Washington, DC: Georgetown University Press, 2009  
368 pp. \$34.95  
ISBN: 978-1-58901-272-1

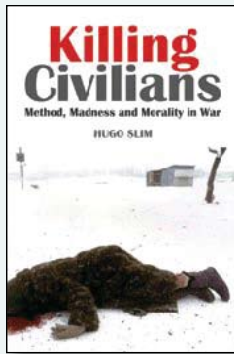
This volume, written for use in the study of international relations, ethics, foreign policy, and related fields, offers an entry-level set of readings offering insights into the debates surrounding these issues. The book is organized into four parts: conflict and resolution; grounds for intervention; governance, law, and membership; and global economic justice. To meet their objective of providing "normative, empirical discussions and studies . . . of international issues . . . uppermost in reader's minds," the editors have compiled essays on topics of immediate importance including preventive war, human-

itarian intervention, legitimacy of global governance institutions, and international organizations. The take-away for military leaders, strategists, and policymakers is a basic indoctrination on how moral theory can inform strategies and policy choices.



**Renegotiation of the Just War Tradition and the Right to War in the Twenty-First Century**  
by Cian O'Driscoll  
New York: Palgrave MacMillan, 2008  
244 pp. \$79.95  
ISBN: 978-0-230-60583-1

Using the invasion of Iraq as context for a broad discussion of the just war theory and tradition, Cian O'Driscoll concludes that "the tradition may be fairly depicted as moving toward a broader *jus ad bellum* than was typical throughout the latter half of the twentieth century." O'Driscoll recognizes that the 21<sup>st</sup>-century spectrum of conflict has expanded to include unilateral and coalition use of force against nonstate actors and in a broader set of situations, such as humanitarian relief. He compares contemporary approaches to topics such as anticipatory war, punitive war, and humanitarian intervention with traditional *jus ad bellum* thinking. O'Driscoll provides a thorough and serious examination of such changes in the just war tradition, and this book will help commanders, planners, strategists, and policymakers to more critically examine contingency planning and war plans in the 21<sup>st</sup> century.



**Killing Civilians: Method, Madness, and Morality in War**  
by Hugo Slim  
New York: Columbia University Press, 2008  
300 pp. \$29.95  
ISBN: 978-0-231-70036-8

**W**hat is a civilian?" asks Hugo Slim, a scholar of humanitarian studies, in this book. Noting that international law has never defined the term and that the Geneva Conventions only describe what a civilian is *not*, Slim examines the notion in the international community that unarmed and innocent people

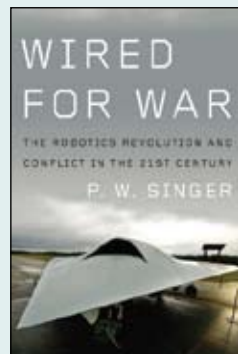
**Wired for War: The Robotics Revolution and Conflict in the 21<sup>st</sup> Century**  
by P.W. Singer  
New York: Penguin Press, 2009  
499 pp. \$29.95  
ISBN: 978-1-59420-198-1

Reviewed by  
SHAWN BRIMLEY

**W**e are building the bridge to the future while standing on it," says an Army colonel quoted at the beginning of *Wired for War*, a book destined to become a touchstone in the evolving debate over how America's military can best prepare for the wars of today and tomorrow. Penetrating in analysis and convincing in argumentation, *Wired for War* is already a classic—if only because it is the first of its kind, offering a tantaliz-

ing but terrifying glimpse of a future where increasingly autonomous machines become decisive weapons of war. The metaphor of bridge-building is apt because, as P.W. Singer describes, the robotics revolution has been a long time coming, and the technologies we are using (and how we are using them) in today's wars are shaping the contours of how we think about, develop, and field tomorrow's technologies. Singer deserve protection in war. He leaves no stone unturned in his discussion of the practice by states and nonstate actors throughout history of killing, pillaging, plundering, raping, and displacing noncombatants. Slim deftly examines ideologies that allow and even encourage wanton abuse or killing of noncombatants and exposes the thought processes that seek to justify perpetrating what today we call crimes against humanity. He compares the horrific to the acceptable and discusses why some forms of killing civilians are considered justifiable. Slim argues that killing civilians in war is almost always immoral and all practical measures to avoid it should be rigorously applied. In the end, he admits that acts of violence against civilians may be an immutable aspect of war and the human condition and that the best we might hope for is to reduce its incidence through greater understanding of the motivations behind it.

—R.E. Henstrand



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provocatively declares that "man's monopoly of warfare is being broken. We are entering the era of robots at war" (p. 22).

While visions of robotic warfare once were confined to the imagination, today's wars are driving rapid and dramatic growth in the use of systems that flirt with what heretofore was considered fantasy. In Iraq, for example, thousands of ground robotic systems are deployed—from tiny remote-controlled reconnaissance vehicles to larger systems that detect and disarm improvised explosive devices. And thousands of unmanned aerial vehicles (UAVs) roam the skies above Iraq and Afghanistan, enabling ground commanders to survey huge areas and improve operational planning and precise targeting.

While UAVs and the various ground-based remote vehicles being used today seem futuristic, they are only harbingers of what is to come. The Navy and Air Force are developing unmanned combat aerial vehicles that will dramatically increase the range and persistence of U.S. airpower. These systems are likely to employ some form of artificial intelligence that may eventually render entire formations of U.S. strike aircraft largely autonomous.

Singer describes numerous efforts under way in the United States, many funded through the Pentagon's Defense Advanced Research Projects Agency, to push the limits of human-machine interfaces of the type featured in William Gibson's book *Neuromancer* or the blockbuster film *The Matrix*. Singer also describes several projects designed to create and field micro-UAVs small enough to enter buildings and microscopic nanobots so cutting edge that possible military applications remain unclear. Other projects are closer to fruition, including various unmanned ground and maritime systems, and several versions of autonomous combat and medical robots.

Given all that *Wired for War* describes, it is probably not an

overstatement to suggest that we may be on the cusp of another revolution in military affairs. That term is not very popular anymore, tied as it is to the legacy of Donald Rumsfeld and *shock and awe, effects-based operations, transformation*, and other buzzwords that obscured more than they revealed about warfare and military innovation. But the scale and scope of what is happening with robotics and artificial intelligence justify Singer's use of the term *robotics revolution*. If he is right, robotics will have as much or more impact on warfare as the longbow, horse cavalry, railroads, radio, or precision weapons did during earlier periods.

Talk of transformation or network-centric warfare has declined in part because of an emerging and overdue consensus that the zeal to advance the information revolution led some advocates to embrace the illusion that technology could "lift the fog of war" and provide a "God's-eye view" of the battlespace. The notion that a commander could gain total "information dominance" cut against the entire history of warfare, and many military officers and civilian policymakers ignored Clausewitz in favor of dubious and untested concepts. Singer does not believe the robotics revolution will lift the fog of war; rather, he argues that the problems of uncertainty and friction are likely to play large roles in how these technologies evolve: "The dark irony is that the more advanced robots get, the more complex they become, and the more potential they have for failure" (p. 157).

Singer's book is particularly timely, given that the Obama administration is preparing its National Security Strategy and the Pentagon is drafting the Quadrennial Defense Review, which will—perhaps more than any before—influence the size and shape of America's military forces. For example, Secretary of Defense Robert Gates has been outspoken in his insistence that greater resources be devoted to intelligence, surveillance,



and reconnaissance and UAV capabilities.

*Wired for War* is also relevant to the important debate about how best to optimize and balance resources for ongoing wars and future threats. Complicating this debate is the participants' tendency to articulate their views as dramatically as possible so as to make the most impact. Too often, those advocating for radical restructuring to prepare for future counterinsurgency or stability operations will frown upon technology or the possibility of scenarios where high technology plays a decisive role. Those who resist the need for substantial reform tend to downplay both the requirement for and ability of U.S. forces to prepare for what General Rupert Smith in *The Utility of Force* calls "wars amongst the people." But for this so-called robotics revolution to be unfolding amid three so-called irregular conflicts—Iraq, Afghanistan, and the global campaign against al Qaeda—makes *Wired for War* that much more relevant. It is hard to tell what combination of battlefield necessity, industrial pressure, simple technological advancement, and a quintessentially American "high-tech" strategic culture is driving these military innovations. That they are occurring despite the decidedly unconventional nature of current conflicts speaks volumes.

Readers may question the scope of the vision in *Wired for War*—of a robotics revolution that redefines who and what will conduct war, and how—but in Singer's words: "We do know that major shifts are already going on in computing power and machine intelligence. And if the trends for the future do hold true even at the most minimal level, then things are going to get real interesting" (p. 81).

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**Strategic Advantage: Challengers, Competitors, and Threats to America's Future**

by Bruce Berkowitz

Washington, DC: Georgetown

University Press, 2008

287 pp. \$26.95

ISBN: 978-1-58901-222-6

Reviewed by

GREG GRANGER

**B**ruce Berkowitz offers an exposition of what the United States requires in its national security policymaking to retain "strategic advantage" over a diverse, fluid set of adversaries and potential adversaries. Based on the book's subtitle, one expects to read analyses of actors (*challengers* and *competitors*, though their difference is undefined in the text) and how they constitute threats to the advantaged U.S. geopolitical position. One indeed encounters threatening actors in its pages, but the book actually addresses a particular perspective that Berkowitz believes must drive U.S. national security policymaking in order to dispatch threats and ensure the country's future. This perspective is informed by six well-reasoned principles that he concludes are necessary underpinnings of a national security policy geared toward "staying on top" (p. 231).

Berkowitz's first principle is "to try to understand as many potential scenarios for world events as practical. Identify the most important variables . . . that underlie each scenario. Identify the mileposts that might signal how events are actually unfolding" (p. 231).

The second principle "is to recognize the special strengths that give the United States outsized influence—and then cultivate and exploit them." These strengths include the Nation's support for a "large professional military force," the global reach of American culture, and "the 'critical mass' that the United States enjoys in several economic, cultural, and technical sectors" (p. 231).

The third principle calls on policymakers to plan for the future "knowing that that situation five or even three years from now will . . . almost inevitably look very different from what we think it will be" (p. 232). He echoes Donald Rumsfeld's warning of "unknown unknowns" and, understandably perhaps, does not go very far in recommending specific ways to prepare for an uncertain near-term future.

Berkowitz's fourth principle is a reminder to "realistic planners" that they are working under "practical constraints" such as the availability of necessary resources (p. 232). One such constraining factor is the subject of his fifth principle: the need to "rejuvenate" government organizations that "tend to become ossified, bureaucratic, and averse to risk as they mature" (p. 232). The sixth principle emphasizes the significance of a strong and growing economy to national security because a growing economy makes "more options" available to policymakers (p. 232).

According to Berkowitz, the goal of U.S. national security policy is to produce a resilient and agile superpower that will excel in military, economic, and cultural capabilities. However, each category of capabilities—military, economic, and cultural—could be better supported with more diverse data. Regarding military matters, Berkowitz argues that the Jacksonian spirit of the American people should continue to provide the public support necessary for high military expenditures—a perspective problematic in its determinism and in its failure to account for diverse views on national

security matters among the population and for changes over time that may deviate from the "Jacksonian spirit."

In regard to economics, the current U.S. lead in gross domestic product is an inherent advantage for continuing to lead the world with an innovative and high-tech economy amid growing competition. Given the global financial upheavals soon after the book's publication, only time will tell if Berkowitz's confidence in the U.S. economy as a key element in sustaining the Nation's global leadership is warranted.

One issue that spans economic and cultural sources of national power is immigration policy, which Berkowitz finds significant. Without a successful immigration policy, the United States would have a much harder time maintaining a healthy economic foundation to support national security strategy. However, Berkowitz chooses to perceive the topic through a narrow lens, saying too little about art, language, and media as cultural sources of influence, and instead choosing to place culture in the context of Joseph Nye's concept of soft power.

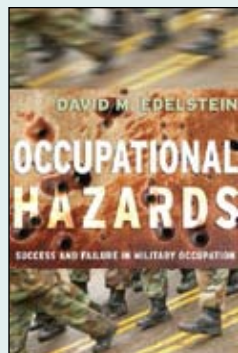
While this approach is perfectly valid, as soft power relies in part on the appeal of American culture as a source of international influence, Berkowitz emphasizes the attractiveness of the American workplace to foreign workers as the successful application of soft power. His point is well taken, but he misses the opportunity to more fully analyze the cultural component of ensuring continued American global leadership. Indeed, in the discussions of each of the economic, military, and cultural components of U.S. national security, Berkowitz's evidence and conclusions are supportable, but could be much stronger with discussions of multiple indicators of hard and soft power.

The book is a quick read written by an author who clearly grasps his topic, although it is stylistically geared toward the nonspecialist in national security

affairs. However, Berkowitz's use of this style, while making the book more accessible, may have clouded his judgment about what to include in it. Specifically, he engages in some historical storytelling of questionable relevance. In general, while the academic or practitioner in national security affairs will find enough substance in Berkowitz's recommendations to justify the short time it takes to read the book, getting past the meanderings is occasionally difficult.

Overall, one wishes for a deeper analysis of Berkowitz's core arguments and recommendations. His call for the establishment of Policy Directors within a new national security policy structure modeled on the military command structures established by the Goldwater-Nichols Act is worthy of consideration, but suffers from wishful thinking rather than providing a detailed discussion of just how it is they are supposed to "just do what is necessary" to make agencies interact more effectively (p. 222). Rather than provide such details, Berkowitz concludes with the six principles discussed above (although he would have better served his readers by outlining these principles at the start of the book, as they correlate with its general organization). Taken together, these principles by which policymakers are called upon to recognize the strengths and limitations of power and to be able to forecast changes over the short term as well as rejuvenate relevant bureaucracies bring to mind the Clinton-era National Military Strategy of *shape, respond, and prepare*, a capabilities-based approach that continues in some fashion today. In sum, we must be prepared for anything and everything. One questions whether this is a reasonable expectation, a question that is not clearly answered in this book.

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**Occupational Hazards:  
Success and Failure in Military  
Occupation**  
by David M. Edelstein  
Ithaca: Cornell University Press,  
2008  
235 pp. \$35.00  
ISBN: 978-0-8014-4615-3

Reviewed by  
MARK GRIMSLEY

**L**ike most wars, the global war on terror has generated its share of simplistic pronouncements. In 2003, it was common to hear partisans of the George W. Bush administration scoff at warnings that a successful occupation of Iraq would be difficult. Why, they replied, just look at the successful post-World War II occupations of Germany and Japan. Common nowadays are assertions that the key to an easy military occupation is to damage an enemy so heavily that he knows he has been beaten, or that a successful occupation is more likely to occur if the occupier employs a conciliatory policy or if several nations cooperate in a multilateral approach. David Edelstein's *Occupational Hazards* suggests that these pronouncements and assertions are largely misguided.

Edelstein, a political scientist, examines 26 military occupations since 1815. Of these, he targets nine for extended treatment based on "variation in key independent and dependent variables, historical interest, and relevance to contemporary policy challenges" (p. 19). By *military occupation*, Edelstein means "the temporary control of a territory

by a state (or group of allied states) that makes no claim to permanent sovereignty over that territory." He uses the term in contradistinction to occupations intended to achieve colonization or annexation.

Unlike a colonial or annexationist power, the military occupier wants to get out of the occupation business—but only when a certain endstate is achieved. At a minimum, the occupied territory must no longer pose a threat to the occupying power or its interests. Ideally, it is transformed from an adversary into a reliable ally. But either way, it is a difficult task. Of the 26 occupations Edelstein examined, only 7 were fully successful, 5 were "mixed successes," and 14 (54 percent of the total sample) failed outright.

What do the successes have in common? The biggest single predictor turns out to be an external power that both the occupier and occupied view as a major threat. The external threat becomes a kind of partner to the occupier in the sense that it helps convince the occupied population that the occupier's presence is desirable or, at the very least, better than the alternative. Thus, the post-1945 occupations of Japan and Germany achieved success, in considerable measure, because their populations viewed the Soviet Union as a major external threat.

In contrast, in the post-1945 period, the Korean people did *not* view the Soviet Union as a major threat, and consequently the United States faced a difficult occupation. Liberated at last from decades of colonial administration by Japan, Koreans wanted complete independence from foreign rule. The United States did not wish to withdraw until a regime friendly to American interests was firmly in place, but it could neither establish stability nor find a strong, reliable leader to take the helm. By August 1948, when the United States formally concluded its occupation, not only had it largely failed to achieve these objectives, but a virtual civil war

had begun as well. At best, the United States had achieved only a mixed success.

The American experience in postwar Korea illustrates a dilemma all too common for the military occupier. "To successfully withdraw," Edelstein writes, "occupying powers must accomplish two tasks. First, they must return sovereignty to a legitimate, indigenous, and reliable government, and second, they must ensure that the occupied territory will be secure and nonthreatening after the occupation concludes" (p. 155). In the absence of these conditions, the occupier faces a choice between leaving too early, which invites instability and later reoccupation; or staying too long, which leads to "opposition from the occupied population and dissatisfaction from the occupying power's population" (p. 155).

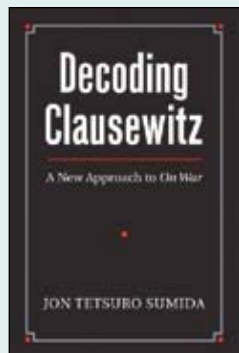
In a section on the post-September 11 occupations, Edelstein judges that both Iraq and Afghanistan present the challenge of achieving success in the absence of a perceived external threat on the part of the occupied populations. At the time the book entered production, the Afghanistan occupation seemed more likely to succeed, primarily because the United States had eschewed complete control of the country and had "implicitly abandoned its goal of achieving an effective central state" (p. 155). However, Edelstein warns that this approach "has avoided large-scale resistance in the short-term, but may pose long-term dangers"—dangers that in 2009 have clearly materialized.

Edelstein portrays Iraq as a failed occupation with the United States on the horns of the classic dilemma of leaving too soon or staying too long. Many would now regard that verdict as premature, yet it is interesting to note that the turnaround in Iraq involved the emergence of an admittedly unusual external threat—al Qaeda in Iraq (AQI)—that spurred the so-called Anbar Awakening and similar events in which

Sunni insurgents shifted to the American side because AQI was so ideologically fanatical and so murderously repressive as to make American forces seem comparatively benign. In this respect, the presence of AQI is analogous to North Korea's invasion of the South in 1950, which conjured an overwhelming external threat that made South Koreans belatedly view the United States as their protector.

Although *Occupational Hazards* is analytical rather than prescriptive, Edelstein does acknowledge some policy implications relevant to the present situation in Afghanistan. Afghanistan is a low-external-threat environment, and in such cases Edelstein finds coercion an essential requisite for successful occupation. In this respect, the Soviet occupation of northern Korea forms an interesting contrast to the U.S. occupation of southern Korea. The Soviets faced an identical situation—a Korean population desirous of independence and unconvinced of any major external threat—yet succeeded because they began with an initial program of vicious coercion, designed to underscore the lethal consequences of resistance, combined with subsequent accommodations that made their occupation palatable. The result was the establishment of a stable indigenous regime friendly to Soviet interests. It is doubtful that such a program is politically possible or morally acceptable to the United States and its allies. And in its absence, by Edelstein's analysis, the prognosis for a successful occupation of Afghanistan is not good.

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**Decoding Clausewitz: A New Approach to *On War***  
by Jon Tetsuro Sumida  
Lawrence: University of Kansas Press, 2008  
199 pp. \$29.95  
ISBN: 978-0-7006-1616-9

Reviewed by  
JOHN T. KUEHN

One is tempted to ask: why should I read another study or article about Carl von Clausewitz's masterpiece *On War*? After all, there are wonderful essays by Peter Paret and Michael Howard (that accompany their definitive translation), Bernard Brodie, Michael Handel, Alan Beyerchen, and a host of others that offer a great deal of valuable information about *how* a modern reader (usually a military professional or a military historian) can make some practical or theoretical use of, and get something of value from, this rather imposing book.

Fortunately, this is exactly the question that Jon Tetsuro Sumida addresses first in *Decoding Clausewitz*. He argues that most interpreters think of *On War* as essentially incomplete. According to this view, only chapter one of Book I, or Book I—depending on whom you read—was finished, and the rest must be read with a sort of decoder ring to understand the bulk of the text. Because of this assertion, new readers of *On War* have tended to come to the table with a pre-existing bias. Sumida makes a strong argument for the case that *On War* was more of a finished product than most interpreters

imply (pp. xiii–xv). He also identifies two other chief differences in his approach. First, he emphasizes that the line between theory and history that most interpreters draw is problematic to a clear reading of Clausewitz. Instead, he proposes that Clausewitz's theory is one of “practice,” rather than an attempt at an all-encompassing description of war as a “phenomenon” (p. 5). Second, Sumida emphasizes Clausewitz's extensive writing on defense as the stronger form of war, arguing for this concept's primacy as a way of understanding *On War* as a theory of practice (p. 4).

The implication of these conclusions is, as Sumida claims, that any “selective engagement”—that is, cherry-picking key passages in *On War*, especially from the first book—does Clausewitz and the reader an injustice (p. xii). For example, some historians have argued that Clausewitz makes an argument in favor of absolute war when he does nothing of the sort. Therefore, one must read *On War* comprehensively. The good news is that Sumida offers a methodology, a framework, for doing so. This does not mean that he has found the “holy grail” of how to make the book *easy* to read, but that he offers a way to make it more *fulfilling* to read. He regards *On War* as:

*a set of instructions on how to engage in serious learning of a highly personal nature rather than an impersonal representation of the totality of that which is to be learned.* Clausewitz's approach to theory may be seen not only in terms of how it might improve an individual's decision-making capacity in war and politics, but also in terms of how it might be a pedagogical model applicable to the development of the ability to do anything that is difficult, complex, contingent, and dangerous (p. 5, emphasis in original).

Sumida wants us to spend our time reading his book to divest ourselves of what he calls “pre-conceptions” and then to prepare ourselves mentally for the

personal development ahead (p. 6). This approach makes *Decoding Clausewitz* that much more useful, as not only the novice but also those with varying degrees of familiarity can pick up *On War* and look at it through a different lens—Clausewitz's lens.

Sumida gives a structural preview of the book's four main chapters in the introduction and covers all the ground mentioned above. He also provides a cogent review of the historical context of the man himself as well as key elements of the literature about Clausewitz since his death in 1831. It is worth noting that Clausewitz is not the first theorist that Sumida has subjected to this sort of ambitious revisionism. In 1997, he offered a similar set of proposals about Alfred Thayer Mahan in *Inventing Grand Strategy and Teaching Command*. Sumida's larger arguments in both these books make a convincing case for the practicality of studying military history to inform and develop judgment in strategic leaders.

I have been teaching *On War* to field grade officers since 2000. The rereading of Clausewitz that I have done as a result of Sumida's book has made me revise my own views and will almost certainly cause me to revise my presentation. I advise my students to continue to read Clausewitz and engage his ideas on a regular basis. Sumida articulates coherently why we (especially military professionals) should develop such habits. *On War* should not be confined to war and staff colleges—it needs to be fundamental reading for any leader who aspires to high political office. I have always believed that *On War* deserves as broad and educated a readership as possible. The same holds true for Sumida's insightful and practical book—for both Clausewitz veterans and those who have not yet discovered *On War*'s hidden treasures.

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# Gaming the 21<sup>st</sup> Century: What to Game?

## Center for Applied Strategic Learning

Easily the most frequently asked question of gamers is how we select topics. Fairly often, we pick topics by asking “what if” questions about the hotspot regions of the world. What if the leader of a nuclear state, for instance, should be assassinated and it is unknown who has control of the national arsenal? What if another state should trigger energy supply disruptions to meet its own political goals? What if nonstate actors’ capacities for cross-border violence grow to the extent that they can incite conflict between national governments? In the Center for Applied Strategic Learning at the National Defense University and elsewhere, these “what ifs” are explored at length by policy analysts and senior government leaders.

But is this the best way to pick topics? Moreover, is it the best way to identify the topics that could dominate the future? In *Joint Force Quarterly* 52 (1<sup>st</sup> Quarter, 2009), we posited that qualitatively specified exercises (political-military or tabletop exercises) are not good at finding the solution to some broad, ill-defined, strategic-level dilemma. But they are extremely effective tools for identifying, weighing, and even assigning importance to the factors and constraints that shape the strategic arena in which policymakers make decisions. This process of concept validation is important because it is prerequisite for good subsequent analyses and, eventually, doctrine design. This suggests that the important question for defining games concerning strategic-level problems is not “What if this event happens?” but rather “What’s going on here?” and exploring what factors create a problem.

The issues most often identified as national security challenges are political fundamentalism, transnational terrorism, populist nationalism, proliferation, utility and costs of international courts and law, or food crises. Sometimes these issues coincide with a geographic area, but just as often their boundary-less nature is what makes them so

hard to address. These issues are frequently characterized by a core set of issues or trends that make them a discrete, coherent problem that could be transformed into game themes and variables. At best, countries or regions are really case studies of these more fundamental trends, which it may make more sense to focus on directly.

What should we be doing when crafting strategic-level, qualitatively specified games from which we can gather the most knowledge and conduct the best analyses? As we brainstorm topics, we should be asking, “What’s going on here?” and write games that explore the answer to this question. Indeed, we are overfocused on games that elicit policy recommendations and on crisis simulations. For better insight, however, we should pay more attention to the work of mainstream social science research, which has devoted more serious attention than the policy analytic community to how to do good qualitative research. A greater engagement with rigorous social science could be useful in identifying specific topics as well as new ways to examine old ones. Basic concepts as diverse as public goods theory, the two-level game, and social capital could tell us interesting things about contemporary problems such as the challenges of crafting international agreements to counter transnational terrorism, what domestic factors help democracy succeed in some places and not others, and the implications of variations in different institutional arrangements.

### Topics to Consider

**Elements of and Obstacles to Stability and Reconstruction.** Stability, security, transition, and reconstruction (SSTR) issues are an interesting topic because among Iraq, Afghanistan, and teetering governments elsewhere in the world, how to (re)build or shore up governments and civic institutions and the impact of their success on U.S. national security interests is set to be one of the top issues for the foreseeable future. Most

nationbuilding now occurs at what game theorists have called a two-level game—that is, there is both a domestic process through which agreements must be reached as well as an international level of negotiations. An interesting thing about SSTR issues is that the same actors are usually simultaneously playing both games. Whether supporters or obstacles to the process, they are negotiating (or challenging) international agreements and roles for a nascent state at the same time as they build domestic institutions, trying to advance their preferred vision at both levels simultaneously. External actors, whether partners or spoilers, frequently intervene in both domestic and international processes, providing security support to the government and procuring international funding for it, or providing assistance to an insurgency or the opposition.

**Transnational Terrorism.** This issue is salient and likely to dominate the policy community in coming years. There are several sub-issues arising from it that could make for an interesting set of questions to examine. One example is the exigencies of constructing a transnational response. One of the difficult things about combating terrorism is that terrorists and their assets move easily across international boundaries, while nation-states still need to develop their responses and coordinate them with other national partners who have multiple priorities and an interest in getting the best outcome at least cost. In short, terrorists’ interests are concentrated and their targets’ interests are diffuse. Disrupting and deterring terrorist activity are costly. Moreover, any efforts that one state takes to promote security or deter activity will benefit other states, even if the states do not contribute to the effort. Basically, transnational terrorism creates a classic collective action problem: the best, most secure outcome is achieved by broad cooperation, but it is individually rational for countries not to cooperate, since they will get the benefits of any consequent decrease in terrorism anyway. Difficulty reaching agreement on a range of issues having to do with disruption and deterrence is due not, therefore, to lack of “will” or “concern” but to a concrete matter of incentives.

**Failing States and Nuclear Weapons.** The risk of governments that already possess nuclear weapons failing and losing control of existing arsenals constitutes an important subset of nonproliferation issues. An exercise that examined not the consequences of

but the risk factors for this scenario would be timely and relevant.

**International Law and the Internationalization of Norms.** Tabletop exercises are particularly good at scrutinizing “the rules of the game” and assessing their impact on strategic choices, meaning that a focus on legal issues could be immensely valuable. Social scientists have long looked at law, not so much in the normative sense of advocating better or differently articulated human rights law, for instance, but as the contractual infrastructure that aids in making and executing agreements with partners and creates incentives that structure those agreements. Law as procedural politics would be amenable to exploration in game format (with law, itself, being the paradigmatic, qualitatively specified constraint). At the domestic level, law and procedural politics are fairly settled, but there are several international and transnational spaces where the rules of the game are rather in flux, sparse, or problematic even where the substance of a policy goal may be much less contested and where examining the implications of varying legal structures would be very interesting.

Current methods of topic selection, then, are adequate. It is not difficult to identify a handful of topics that should be relevant in the short- to mid-term. If we construct scenarios representing fairly short time spans, we can plausibly describe events that might come to pass. What this does not do is elicit particularly useful strategic insights or help us to better conceptualize problems. Conventional approaches yield little but conventional wisdom.

To identify strategic issues that will be of mid- to long-term import, we must actively seek out problems or try to find trends or situations not quite understood. If qualitatively specified games are better at identifying important factors and concept validation than solving problems per se, it is preferable to choose topics and formulate scenarios that provide a basis for generalizing about trends rather than just posing “what if” questions. It would be a useful evolution in game topic selection to focus on issues, rather than regions, and on using gaming to build bridges with social science research and seek to concretize useful but sometimes technical and abstract developments in the field. **JFQ**

# Joint Doctrine and Irregular Warfare

By JEROME M. LYNES

**D**uring a recent conference at the National Defense University (NDU), an attendee expressed concern that joint doctrine has failed to adequately address irregular warfare (IW). This is not exactly so, but the charge has circulated with such frequency of late that I wish to continue the discussion.

The arc of IW, as it has been intellectually identified and expressed, is a product of the last Quadrennial Defense Review (QDR). The component pieces of IW were detailed therein, and the ensuing IW Roadmap put the Department of Defense on the path to institutionalizing irregular warfare in order to better balance warfighting capacity at both ends of the conflict intensity spectrum. I agree that we have not reached that goal yet, but I do have professional insight as to how we have endeavored to capture it in joint doctrine.

Before jumping into this discussion, it is relevant to talk about the distinction between concepts and doctrine. These two areas are frequently confused with one another, but have very different natures. *Doctrine* is the body of recorded wisdom about current capabilities; it has to be real or we cannot record it. *Doctrine* is the box that holds our wisdom about “what we think we already know.” *Concepts* are very different. They are “out of the box” ideas that may or may not work. The confusion over the distinction between the two is rampant in regard to IW, as independent concept and doctrine development work has been going on simultaneously. In a perfect schema, concept work starts with both a real problem and what we think we already know (doctrine). This linkage begins the journey to solutions that are ultimately recorded as doctrinal wisdom. Alternatively, doctrine should “wait” for concept work to come to fruition via the winding road of spiral development and field testing. In the “concepts to capabilities” journey, doctrine is after the *equals* sign.

Returning now to the question of IW in joint doctrine, first and foremost,

Joint Publication (JP) 1, *Doctrine for the Armed Forces of the United States* (May 17, 2007<sup>1</sup>), establishes the definition of IW and places it in clear contrast with our traditional view of war. It does this primarily in chapter 1, “Foundations,” beginning in paragraph 1, “Fundamentals,” on page 1. The discussion continues in depth a few pages later in paragraph 2, “The Strategic Security Environment” (I–6 and I–7). JP 1 is the Capstone publication in the joint doctrine hierarchy, and it sets conditions for subordinate joint and Service doctrine publications.

The QDR deconstructed IW into a number of separate aspects. Here follows a list of them, with a number indicating how many different joint doctrine publications address the subject:

- insurgency and counterinsurgency (14 JPs), including the new JP being written on counterinsurgency
- terrorism and counterterrorism (16 JPs), including the new JP being written on counterterrorism
- stability operations (16 JPs), including the new JP being written on the subject
- unconventional warfare (21 JPs)
- foreign internal defense (23 JPs), including security force assistance
- information operations (46 JPs)
- psychological operations (41 JPs)
- intelligence and counterintelligence (40 JPs)
- civil-military operations (38 JPs).

Doctrine is continuously updated and revised, and what happens in this iterative process is a sharpening of our focus and treatment of IW to obtain an “equal footing” with traditional war. A major revision of both JP 3–0, *Operations*, and JP 5–0, *Planning*, will occur this year. These are significant opportunities to meet the QDR’s expressed goal, and these publications are “first among equals” below JP 1, influencing broad swaths of the joint doctrine hierarchy.

An output of these revisions will be an expanded, more comprehensive treatment of IW as it relates to the big ideas in joint doctrine, such as campaign design, campaign phasing, and operational planning writ large.

One might now wonder where the “stand-alone joint doctrine publication on IW” is. We have purposely elected not to go down that road because it does not meet the intent of “equal capacity.” What we are effectively arguing is that IW needs to be in virtually *every* publication, cogently and cohesively veined throughout. Are we there yet? No. Have we come a long way? Yes, absolutely. Will we ever get there? Yes . . . and no. In its purest sense, knowledge is a living, ever-evolving body, and we will never reach a state where we know everything. As an anecdotal point, the previous-to-the-current version of JP 3-0 was signed on September 10, 2001. It was accurate for approximately 12 hours. Has joint doctrine failed to adequately address IW? Not by a long shot, but this is not to say that we do not seek to improve with every revision or new JP.

Let me next share that we recently surveyed the combatant command staffs and other members of the joint community regarding the efficacy and effectiveness of joint doctrine. In this survey, performed for the Joint Staff J7 and supported by a Ph.D. at NDU, our deeply held beliefs about the power and utility of joint doctrine were exposed to customer opinion. With over 7,500 respondents<sup>2</sup> representing all the combatant commands equally, only 4 percent expressed dissatisfaction with any aspect of doctrinal content, clarity, or dissemination. Ninety percent of those surveyed stated that they value and routinely use joint doctrine, 50 percent on a weekly basis. There was no clamor regarding gaps in IW content. Moreover, only 1 respondent out of 7,500 thought that we needed a stand-alone IW publication. The largest complaint—approximately 9 percent—concerned “flash to bang” (that is, the speed of revision). This is a fair com-

plaint, as we try to balance speed with the generation of wisdom on our pages.

I hope that this information is revealing and helpful. It is often easy to opine on joint doctrine, but when we pull the string on many of these complaints, we usually find that the speakers have not kept up with ongoing efforts. In their defense, part of this may be due to the fact that we do not publish hard copy volumes anymore. It is all online now, so “new editions” are somewhat harder to discern. Online publishing is the overwhelming preference of the community, validated by survey.

Please feel free to write us here at the Joint Staff J7 Joint Education and Doctrine Division with any comment, question, or observation. The address is jeddsupport@js.pentagon.mil. If you are in the Pentagon, please feel free to stop by. **JFQ**

#### NOTES

<sup>1</sup> Change 1 to JP 1 was promulgated on March 20, 2009. This change incorporated the definition of *cyberspace* and expanded discussion of joint capability areas.

<sup>2</sup> Keeping in mind that there are about 12,000 joint duty assignment list billets, 7,500 is a significant return.

Colonel Jerome M. Lynes, USMC (Ret.), is Chief, Joint Chiefs of Staff J7 Joint Education and Doctrine Division.



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### Strategic Forum 240

#### *Hybrid Threats: Reconceptualizing the Evolving Character of Modern Conflict*

America's ongoing battles in Afghanistan and Iraq have highlighted limitations in our understanding of the complexity of modern warfare. Furthermore, our cultural prism has retarded the institutionalization of capabilities needed to prevail in stabilization and counterinsurgency missions.

An ongoing debate about future threats is often framed as a dichotomous choice between counterinsurgency and conventional war. Frank Hoffman argues that this approach oversimplifies defense planning and resource allocation decisions. Instead of fundamentally different approaches, Hoffman argues that we should expect competitors who will employ all forms of war, perhaps simultaneously. Such multimodal threats are often called hybrid threats. Hybrid adversaries employ combinations of capabilities to gain an asymmetric advantage.

Thus, the choice is not simply one of preparing for long-term stability operations or high-intensity conflict. We must be able to do both simultaneously against enemies far more ruthless than today's.

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# Joint Doctrine Update

## Joint Chiefs of Staff J7 Joint Education and Doctrine Division

**T**he Joint Staff J7 (JS/J7), in concert with the Joint Doctrine Development Community (JDDC), remains on the leading edge of capturing lessons learned and best practices for joint doctrine to best equip the joint warfighter. JS/J7 strives to cast the net widely to seek out and harvest doctrine-ready material from a variety of sources. Such sources include the Chairman of the Joint Chiefs of Staff January 2009 Capstone Concept for Joint Operations (CCJO); the U.S. Joint Forces Command 2008 *Joint Operating Environment* (JOE); the 2008 edition of Army Field Manual (FM) 3-0, *Operations*; and the Joint Warfighting Center *Joint Operations Insights and Best Practices* (2<sup>d</sup> ed., July 2008), among others. Each of these works has significant intellectual content to inform and guide further developments in joint doctrine.

The current joint doctrine campaign plan calls for the JDDC to assess and begin revising the Keystone-level Joint Publication (JP) 3-0, *Joint Operations*, and JP 5-0, *Joint Operation Planning*, in 2009. Accordingly, in April 2009, JS/J7 convened a planner-level working group of combatant command and Service representatives to consider what advances should drive the revisions of these pivotal joint publications. The documents cited above were central to that effort and will manifest themselves in the work on the new editions; these editions are projected for publication in 2010.

Key considerations that resulted from the working group include much content central to the CCJO and JOE, as informed by the other works. Specifically, the CCJO's central thesis viewing joint operations as "the integration and adaptation of combat, security, engagement and relief and reconstruction" resonated as a broad joint operations concept—one that merits studious consideration for inclusion in JP 3-0. Such inclusion notionally offers a way to address the activities that serve as the basic building blocks for joint operations across the range of military operations. CCJO-centric joint experimentation planned for the near term will parallel revision work on JP 3-0, and the JDDC's careful attention to the results of

this work will materially reduce the "flash to bang" time for the revision.

Additional consideration of the working group was given to enhancing the joint doctrinal treatment of the role of the commander in joint operations. The working group embraced the notion (well articulated in the *Joint Operations Insights and Best Practices* pamphlet) of "commander-centric" operations. FM 3-0 asserts this as well, offering much from a Service perspective for joint consideration. The overall consensus reached was to realign the content of these current JPs to emphasize the primacy of the commander both in operations and planning, "speak directly" to the commander about these roles, and provide some best practices and insights to guide the commander and help inform his decisionmaking during joint operations and planning.

Work on JP 5-0 is also paying much attention to work on operational "design" being conducted by the Services, especially the Army. The working group accepted the idea that the ideal output of design is commander's guidance that subsequently informs and drives the joint operations planning process. Intended revisions to key Service doctrine on planning expected for fall of 2009 will be monitored for joint consideration. Additionally, this revision will capture advancements relative to the Adaptive Planning and Execution initiative.

Veined throughout the revisions will be enhanced treatment of irregular warfare (IW) under the specific goal of ensuring that doctrinal content is equally as helpful and relevant in an IW context as it is to traditional war. Much IW-relevant content is already established or is being enhanced in ongoing revision efforts below the Keystone level; enhanced treatment in JP 3-0 and JP 5-0 is both necessary and correct.

The developments briefly covered above led to the decision to open the Capstone-level JP 1, *Doctrine for the Armed Forces of the United States* (May 2, 2007, with change March 1, 2009), for an early full assessment. Consideration is being given to a block revision of these three joint doctrine publications. The objective of accomplishing these revisions, in close sequence, is to produce a central narrative

throughout with clear, common, and coherent linkages that set the conditions for all the series publications below them.

Readers with interest in contributing to these revisions should expect that the first draft of the new publications will circulate for comment in late 2009; the final draft is envisioned to circulate in summer of 2010. By the end of 2010, publication should occur in rapid succession; this sequence is likely to include a revised JP 1.

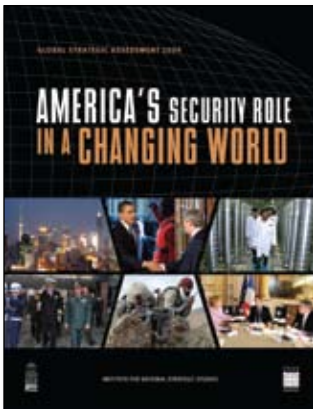
### JPs Revised or Under Review\*

- JP 1-05, *Religious Support to Joint Operations*
- JP 2-01, *Joint and National Intelligence Support to Military Operations*
- JP 2-01.3, *Joint Tactics, Techniques, and Procedures for Joint Intelligence Preparation of the Operational Environment*
- JP 3-0, *Joint Operations*
- JP 3-02, *Joint Doctrine for Amphibious Operations*
- JP 3-02.1, *Joint Tactics, Techniques, and Procedures for Landing Force Operations*
- JP 3-06, *Doctrine for Joint Urban Operations*
- JP 3-07, *Stability Operations* (new)
- JP 3-07.2, *Joint Tactics, Techniques, and Procedures for Antiterrorism*
- JP 3-08, *Interagency, Intergovernmental Organization, and Non-governmental Organization Coordination During Joint Operations*
- JP 3-09.3, *Joint Tactics, Techniques, and Procedures for Close Air Support*
- JP 3-13, *Information Operations*
- JP 3-13.2, *Psychological Operations*
- JP 3-17, *Joint Doctrine and Joint Tactics, Techniques, and Procedures for Air Mobility Operations*
- JP 3-22, *Foreign Internal Defense*
- JP 3-24, *Counterinsurgency*
- JP 3-26, *Counterterrorism*
- JP 3-29, *Foreign Humanitarian Assistance* (signed fiscal year 2009)
- JP 3-30, *Command and Control for Joint Air Operations*
- JP 3-31, *Command and Control for Joint Land Operations*
- JP 3-40, *Joint Doctrine for Combating Weapons of Mass Destruction*
- JP 3-52, *Joint Doctrine for Airspace Control in the Combat Zone*
- JP 3-61, *Public Affairs*
- JP 4-01.5, *Joint Tactics, Techniques, and Procedures for Transportation Terminal Operations*
- JP 4-03, *Joint Bulk Petroleum and Water*
- JP 4-05, *Joint Mobilization Planning*
- JP 4-06, *Mortuary Affairs in Joint Operations*
- JP 4-08, *Joint Doctrine for Logistic Support of Multinational Operations*
- JP 4-09, *Joint Doctrine for Global Distribution*
- JP 5-0, *Joint Operation Planning*

\* All Keystone and Capstone publications have an associated Podcast available for download at the Joint Doctrine, Education, and Training Electronic Information System (<https://jdeis.js.mil>) or Joint Electronic Library ([www.dtic.mil/doctrine/nipr\\_index.html](http://www.dtic.mil/doctrine/nipr_index.html)) Web sites. Podcast link available at [www.dtic.mil/doctrine/podcasts.html](http://www.dtic.mil/doctrine/podcasts.html).

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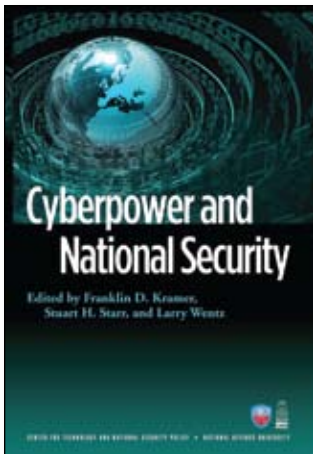
*Edited by Patrick M. Cronin*  
*Director, Institute for National Strategic Studies*

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# Force Modernization, Technology, and Innovation

... and more in issue 55,  
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Clockwise from top: Soldiers use high explosives to destroy insurgent hideout in Shuzayf, Iraq (U.S. Navy/Walter J. Pels); Airman maintains Theater Airborne Reconnaissance System pod, Joint Base Balad, Iraq (U.S. Air Force/Erik Gudmundson); Marines shoot shoulder-fired multipurpose assault weapons during predeployment desert warfare training (U.S. Marine Corps/John McCall); Sailors patrol waters in support of maritime security operations in U.S. 5<sup>th</sup> Fleet area of responsibility, Persian Gulf (U.S. Navy/Nathan Schaeffer).

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